Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES
October Term 1995

DONALD EDGAR JOHNSON,

Petitioner,

V.

RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON, JR,; THE ESTATE OF CARL A. JOHNSON, SR.; THE O'TOOLE, JOHNSON, POTTER, ROLF, GRAFTON & EKLUND, P.C.; THE LAW FIRM PARTNERSHIPS OF LANDMAN, LATIMER, CLINK & ROBB; CULVER, LAGUE & McNALLY; Plus O'TOOLE, STEVENS, JOHNSON, KNOWLTON & ROLF; **THE STATE OF MICHIGAN**; And ROBERT J. DANHOF-Michigan Court Of Appeals Chief Judge, Jointly And Severally,

Respondents.

Petition For Writ Of Certiorari
To U.S. Court Of Appeals For The Sixth Circuit

PETITION FOR CERTIORARI

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I.

WHETHER THE DEFENDANT STATE SHALL JOINTLY WITH ITS DEFENDANT AGENTS PROVIDE ITS PUBLIC ENTERTAINER-PUBLIC PHONO RECORDS COPYRIGHTED SONGS PRODUCER - PUBLIC NIGHTCLUB OPERATOR WITH CONSTITUTION-MANDATED JUST COMPENSATION FOR HIS NEAR-TOTAL PRIVATE PROPERTIES TAKEN FOR PUBLIC USE BY THEIR LONGTIME "BAIT AND SWITCH" CONFIDENCE GAME-ABUSE OF THE JUDICIAL PROCESS CONTINUING ONGOING CONSPIRACIES?

II.

WHETHER THE DISTRICT JUDGE DID ABUSE DISCRETION, THE NONLAWYER'S 1992-94 POST-APPEALS RULES 9(b), 60(b)(5)(6) PLEADINGS WITH CORRUPTION EVIDENCE FOR RELIEF IN UNEQUITABEL EXTRAORDINARY CIRCUMSTANCES WERE NOT FRIVOLOUS SO THE 12/19/90 JUDGMENT DID DESERVE DE NOVO REVIEW, AND THE FRAUDULENT 1970 DEFAULT, 1974 NO CAUSE OF ACTION, 1974-94 STATE APPELLATE AFFIRMATIONS, 1990 RES JUDICATA, AND 1991-92 FEDERAL APPELLATE AFFIRMATIONS DID NOT BAR JUST COMPENSATION?

III.

WHETHER AT THE ONSET OF THESE PRE-DISCOVERIES PRETRIAL PROCEEDINGS, DEFENDANT STATE AGENT LAW FIRMS SHALL BE DISQUALIFIED FROM FURTHER POST-1964 DUAL REPRESENTATION OF PUBLIC NIGHTCLUB SELLERS AND THE 3 DEFENDANT JOINT VENTURE BUYERS WHO THEY UNLAWFULLY DISGUISED AS MONEYLENDERS WITH A VALID PROMISSORY NOTE/ MORTGAGE FROM THE PLAINTIFF 4TH JOINT VENTURE BUYER WHO THEY JOINTLY CONNED AND DEPRIVED OF HIS CHILDREN, PROPERTIES, CAREER, DUE PROCESS, EQUAL PROTECTION, AND JUST COMPENSATION?

IV.

WHETHER THE DISTRICT JUDGE'S 1990-94 ERRONEOUS PRE-DISCOVERIES PRETRIAL RES JUDICATA SUMMARY DISPOSITION OF INVESTOR'S 4TH AMENDED CLASS ACTION COMPLAINT AND POST-APPEALS DENIALS OF A FRCVP 9(b),60(b)(5)(6) EVIDENTIARY HEARING OF CORRUPTION IN THE COURTS IN UNEQUITABLE-EXTRAORDINARY CIRCUMSTANCES SHALL BE SET ASIDE FOR ABUSE OF DISCRETION, FRAUDS ON THE COURTS, AND WANT OF DUE PROCESS-EQUAL PROTECTION?

V.

WHETHER A NEW DISTRICT JUDGE AND A FIRST-EVER APPELLATE REVIEW OF THE COUNTY'S 1974 "NO CAUSE OF ACTION" DISMISSAL SHALL BE EXPEDITIOUSLY PROVIDED FOR THE PUBLIC PHONO RECORDS-MUSIC PUBLISHING-NIGHTCLUB INVESTOR'S 1990 FEDERAL QUESTION-INTERFERING WITH CIVIL RIGHTS-COPYRIGHT ONGOING ACTION?

VI.

WHETHER THE PRO SE NONLAWYER PUBLIC PHONO RECORDS - MUSIC PUBLISHING - NIGHTCLUB FAMILY JOINT VENTURER -- WHO WAS PROVIDED NO COMPENSATION FOR HIS $300,000-$1,000,000 1964-73 INVESTED PRIVATE PROPERTIES OR APPELLATE REVIEW-WITH EVIDENCE OF HIS 1973-94 STATE CONTRACT ETC. ACTIONS -- SHALL BE PROVIDED WITH DEFENDANT STATE AND ITS AGENTS' PROMPT ACCOUNTING OF HIS PROPERTIES TAKEN (A) FOR PUBLIC USE, (B) FOR POLITICAL USE/BUYING JUDGES, AND (C) FOR NONPUBLIC USE?

VII.

WHETHER STATE COURTS SHALL TRANSMIT ALL 1970-94 APPLICABLE TRIAL COURT TRANSCRIPTS AND EXHIBITS IN THEIR POSSESSION -- PLUS AN ACCOUNTING OF ANY LOST OR STOLEN -- TO THE DISTRICT COURT?

VIII.

WHETHER THE STATE'S "COVERUP" 1970-94 JUDGMENTS AND ORDERS AGAINST THE CONNED AND WIPED OUT NONLAWYER PUBLIC NIGHTCLUB INVESTOR SHALL BE SET ASIDE FOR FRAUDS/ UNDUE INFLUENCE UPON THE COURTS AND WANT OF DUE PROCESS-EQUAL PROTECTION-JUST COMPENSATION?

IX.

WHETHER THE DEFENDANT STATE AND ITS LAWYER AGENTS WITH UNDUE INFLUENCE PROCEEDED IN BAD FAITH AND THE PRO SE NONLAWYER-FOR-22-YEARS IS ENTITLED TO COST OF HIS 4-YEARS' FEDERAL APPEALS INCLUDING A REASONABLE ATTORNEY FEE?

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SUPPLEMENTAL REFERENCE

Injunction of State Proceedings
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§ 5. Deficient State Proceedings.
§ 7. Application where state court judgment is fraudulent or void.
§ 11 Civil Rights Laws.

CITATIONS OF OFFICIAL & UNOFFICIAL REPORTS

A wrongly-captioned (should be Johnson v Johnson, **et al**) published report of an **erroneous** opinion is Johnson v Johnson, No. 91-1160, 1991 U.S. App. LEXIS 17922, at *2 (6th Cir. July 29, 1991).

Another wrongly-captioned published report of an **erroneous** opinion is Johnson v Johnson, No. 92-1829, 1992 U.S. App. LEXIS 34749, at *4-5 (6th Cir. Dec. 23, 1992).

A resulted 1994 **erroneous** state courts' dismissal of petitioner's 1986 priority claim against defendant estate in this 1990 **non**-closed case is Michigan

Supreme Court #97521 at 444 Mich 957 (1994).

GROUNDS ON WHICH JURISDICTION IS INVOKED

6/27/95 is date of court of appeals last order sought to be reviewed.

8/25/95 is date of court of appeals last denial of a petition for rehearing.

S Ct R 10.1(c), 13.4.; 28 U.S.C. §§ 1254(1), 1651, 2101 are the regulations and statutory provisions believed to confer on this Court jurisdiction to review said orders.

> "A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. * * * When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court." S Ct R 10.1(c).

> "The time for filing a petition for a writ of certiorari runs from the date of * * * the denial of the petition for rehearing or the entry of a subsequent judgment..." S Ct R 13.4.

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree..." 28 USCS § 1254(1).

"The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 USC § 1651.

"Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree..." 28 USCS § 2101(c).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

"Congress shall make no law * * * respecting the right of the people * * * to petition the Government for a redress of grievances." Const. Amend. 1.

"No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." Const. Amend. 5.

"All persons born * * * in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without **due process of law;** nor deny any person within its jurisdiction the **equal protection of the laws.**" Const. Amend. 14.

42 USCS § 1985(2)(3) "**Conspiracy to interfere with civil rights** * * * **(2) Obstructing justice; intimidating party, witness, or juror.** If two or more persons in any State * * * conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws; * * * **(3) Depriving persons of rights or privileges.** If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons with such State or Territory from giving or securing to all persons with such State or Territory the equal protection of the laws * * * whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned

by such injury or deprivation, against any one or more of the conspirators." 42 USCS § 1985(2)(3).

42 USCS § 1988 "Proceedings in vindication of civil rights; attorney's fees The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State where the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of section 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 USCS §§ 1981-1983, 1985, 1986], * * * the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." 42 USCS § 1988.

28 USC § 144. "Bias or prejudice of judge Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor

of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term [session] at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith." 28 USCS § 144.

28 USC § 455. Disqualification of justice, judge, or magistrate (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings; (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it; * * * (4) He knows that he, individually or as a fiduciary, or his spouse or minor chiuld residing in his household, has a financial interest in the subject matter in controversy or in a party ot the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding; (5) He * * * (iv) Is to the judge's knowledge likely to be a material witness in the proceeding." 28 USCS § 455(a)(b)(1)(2)(4)(5)(iv).

28 USC § 1331. "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 USC § 1331.

28 USC § 1338(a). "The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to * * * copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in * * * copyright cases." 28 U.S.C. § 1338(a).

28 § 2107(a). "Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree." 28 USCS § 2107(a).

FRAP 4. "APPEAL AS OF RIGHT -- WHEN TAKEN
(a) Appeal in a Civil Case. (1) Except as provided in paragraph (a)(4) of this Rule, in a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 must be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from; * * * (4) If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion under the Federal Rules of Civil Procedure: * * * (C) to alter or amend the judgment under Rule 59 * * * (F) for relief under Rule 60 if the motion is served within 10 days after the entry of the judgment * * * (7) A judgment or order is entered within the meaning of this Rule 4(a) when it is entered in compliance with Rules 58 and 79()a) of the

Federal Rules of Civil Procedure." FRAP 4(a)(1)(4)(C) (F)(7).

FRCVP 8(a)(1). "A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third party claim shall contain (1) a short and plain statement of the grounds upon which the courts jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it..." FRCVP 8(a)(1).

FRCVP 9(b). "**Pleading Special Matters** * * * (b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of the mind of a person may be avered generally." FRCVP 9(b).

FRCVP 12(b)(6). "[T]o dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." FRCVP 12(b)(6).

FRCVP 54(a)(b). "**Judgments** * * *"Judgment" as used in these rules includes a decree and any order from which an appeal lies. * * * (b) * * * When more than one claim for relief is presented in an action * * * the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination

and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." FRCVP 54(a)(b).

FRCVP 56(c) "Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposingaffidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A Summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages." FRCVP 56 (c).

FRCVP 58. "A judgment is effective only when so set forth and when entered as provided in Rule 79(a)." FRCVP 58.

FRCVP 59(e). "A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment." FRCVP 59(e).

FRCVP 60(a). "[M]istakes may be so corrected * * * while the appeal is pending * * * with leave of the appellate court." FRCVP 60(a).

FRCVP 60(5)(6). "Mistakes, Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: * * * (5) ... it is **no longer equitable** that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The **motion** shall be made **within a reasonable time** * * * This rule **does not limit the power of a court to * * * set aside a judgment for fraud upon the court.** * * * the procedure for obtaining any relief from a judgment shall be **by motion** as prescribed in these rules or by an independent action." FRCVP 60(b)(5)(6). (Emphasis added).

FRCVP 62(b)(c). Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant toRule 59, or of a motion for relief from a judment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of as motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or finaljudgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party. FRCVP 62(b)(c).

FRCVP 79(a). "The entry of an order or judgment shall show the date the entry is made." FRCVP 79(a).

MCR 2.612(C)(3). "**Relief From Judgment Or Order** * * * (C) Grounds for Relief From Judgment * * * (3) This subrule does not limit the power of a court to entertain an independent action to relieve a party from a judgment * * * or to set aside a judgment for fraud on the court." MCR 2.612(C)(3).[50]

MCR 7.206(B). "**Extraordinary Writs, Original Actions, And Enforcement Actions** * * * (B) Superintending Control * * * To the extent that they do not conflict with this rule, the rules in subchapter 3.300 apply to actions for superintending control..."

MCR 7.206(B). [There is no "MCR 7.206(B)(3)" like note #2 of the 12/19/90 Opinion].

CONCISE STATEMENT OF THE CASE

"Bait & Switch" Confidence Game

Plaintiff Donald Edgar Johnson (Don herein) and the American Federation of Musicians (AFM) have an agreement signed in 1956 by both presidents that Kandy Tapes & Records Corp. phono recordings will not be transferred without both presidents' signed approval.

Don never signed off of that agreement, never ceased being a member in good standing, never ceased being president, or transferred Kandy assets to this day.[75a]

Don claims that he has always owned legal title to those assets worth up to a million dollars longterm.

A member of the black race participated in the 1959+ skimming of Don's phono records profits from the RCA-Indianapolis pressing facility for RCA Recording Studios, Chicago.

In 1960, Don's instrumental of Five Foot Two Eyes Of Blue/Sweet Georgia Brown made Billboard Top 10 Best Selling Record chart plus many other charts.

Don was 1964 gainfully self-employed coast-to-coast as a $430 for 30 hours weekly AFM-talent agents-booked solo nightclub entertainer with his own juke box stereo phono records/albums/tapes and music publishing companys having worldwide distribution.

Don pioneered pop organ music in stereo.

In the summer of 1964, a "Donald E. Johnson" with signature similar to Don's was being cheered where Don was employed and was elected to Muskegon's board of commissioners; then to mayor as defendant Landman law firm represented the Muskegon Chronicle.

Don had done big favors for the defendant 3 Johnsons (Carl-Sr, Richard,

and Carl-Jr) before 1964.

The 3 Johnsons **"baited"** their family member-Don by agreeing to provide a better way of life for him, his motherless children ages 8 and 10, and his Kandy public music businesses if he would end his 16 years traveling career and settle in the Muskegon area where Carl-Sr and wife owned a 1551 Glenwood, Muskegon, Michigan homestead on Bear Lake and Don owned a 334 Waterview Lane, North Muskegon, mobile home lot on Bear Lake.

Carl-Sr and wife agreed to room and board Don's children for sending them to a single school as opposed to changing schools on traveling engagements 4-6 weeks here and there. Don would pay for the service.

Carl-Jr agreed to become an officer in a Kandy Tapes & Records Corp. (Mich-AFM) that would utilize Don's wholly-owned Kandy Tapes & Records Corp.

(Indiana-AFM) assets.

When Don then pooled his moneys with the 3 Johnsons into Richard's custody for a Muskegon Bank & Trust Co. escrow for purchase of a nightclub, provided his power of attorney #1 to Richard for helping to negotiate terms of a purchase of the nightclub's 15-years land contract in Richard's name while Don was traveling, jointly with Richard passed pooled moneys to the realtor to begin purchase of the nightclub, and then rejected offers for further traveling engagements -- there was a promise with consideration or a 1964 15-years phono records-music publishing-nightclub joint venture contract between Don and the 3 Johnsons.

Carl-Sr told Don to leave his mobile home/office/studio in San Diego storage temporarily.

All four Johnson family members agreed

on minimum initial contributions.

The 3 Johnsons solicited Don's purchasing stock in the fair incorporation (within three years) of the venture with his moneys/assets plus entertaining-operating-maintaining services.

When an opportunity arose to purchase a bargain $600 9-months "resort" state liquor license, a $6,000 pool for a bank escrow was raised to qualify.

The 3 Johnson joint venturers -- about to go into heavy debt for expanding their two machine shop corporations -- never provided Don with full custody/control of their moneys; i.e., they never traded their moneys for Don's promissory notes saying, "Here, Don. Go buy yourself a nightclub of your own choice and on your own negotiated terms."

Within the record herein is Don's bookkeeping in the nightclub's Ledger backed by hard evidence such as bank

records, signature cards, and business certificates that show Don's memos of collateral to the 3 Johnsons.

Example: On 9/28/64, DJ (Don) contributed $900 to the MBTC (Muskegon Bank & Trust Co.) $6000 escrow. On 9/28, RJ (Richard) contributed $4000 to the MBTC escrow. On 9/28, CJII (Carl-Jr) contributed $1100 to the MBTC escrow. About 10/1, DJ contributed 1400 + 435 + 165 or $2,000 to Richard for reducing his $4000 to $2000 and upping Don's contribution by $2000.

"	1964	ITEMS		DEBITS	CREDITS
Ca	9/28	MBTC Escrow	DJ	900	900
"	"	"	RJ	4000	4000
"	"	"	CJII	1100	1100
"	9/__	RJ <B Life Ins Approx	DJ	1400	1400
"	10/1	RJ <Wages T 10/1	DJ	435	435
"	"	RJ <Wages	DJ	165	165"

But for Carl-Sr's promise to contribute, the above contributions would not have been made. He contributed by year's end and thereafter.

Richard's realtor had Don provide

Richard with Don's power of attorney #1 drafted in the office of municipal judge John H. Piercey for negotiating terms and purchasing the nightclub in Richard's name while Don was traveling.

The 8/64-12/64 Landman partnership represented both debtors and creditors: the 4 Johnson buyers and nightclub land/building sellers that was to cost $65,000, then $100,000+.

The 12/64-1/67 O'Toole partnership represented the 4 Johnson buyers while attorney O'Toole and/or the O'Toole partnership represented sellers of the nightclub license that was to cost $18,000, then $31,000+.

Don contributed but $10 to the 1964-70 cost of the O'Toole partnership services.

The 3 Johnsons secretly-from-Don retained the Landman and O'Toole firms including attorney Albert J. Engel,

Jr. a/k/a Albert J. Engel, to disguise themselves as moneylenders to their partner-Don.

Richard's realtor A.J. Mark while knowing about the pooled moneys in Richard's custody, solicited Don to sign an Engel-Drafted and O'Toole re-drafted license sales agreement that Don was not on a joint venture with his partners and the cost was not $18,000; but $30,000+, inter alia.

Richard solicited Don's signing a Landman-firm-drafted agreement that made it appear that Don, not Richard, had full custody of the pooled moneys used to begin the nightclub purchase.

In disguising the 3 Johnsons, attorney Engel represented both to-be debtor Don and the 3 Johnsons to-be creditors.

The 3 Johnsons secretly-from-Don "**switched**" the nightclub plus real estate improvement joint venture purchases from

being in Richard's or Richard and Don's names to being in Don's name only.

On April 15, 1965, they secretly-from-Don retained attorney Engel to draft, approve, have Don sign, and 1965-74 lock away from Don a list of documents including the 11/5/64-3/22/65 nightclub 15-years land contract purchase plus their fabricated invalid Don's $20,600 "blanket" promissory note to the 3 Johnsons secured by a mortgage on the jointly-purchased tax-laden nightclub land/building with concealed owners.

> "...15th day of April in the year of our Lord one thousand nine hundred Sixty Five * * * Donald E. Johnson, a single man * * * of the first part; and Harry E. Gibson * * * and Richard G. Johnson * * * Jointly and to the Survivor of them, Trustees of the second part * * * in consideration of the sum of TWENTY THOUSAND SIX HUNDRED DOLLARS * * * parcels of Land situated and being in the City of Muskegon Heights * * * to-wit: Parcel 1. * * * Parcel 2. * * * 1965 April 15 PM 4:39 /s/ * * * REGISTER OF DEEDS * * * Engle & Engel, Attys. * * * in Presence of /s/ **Albert J. Engel, Jr.** ..."

About the same time, Richard's realtor's associates allegedly secretly-

from-Don and fraudulently claimed legal title to Don's Kandy Tapes & Records Corp. (Indiana-AFM) plus Kandy Music Publishers (BMI) including Don's copyrighted songs -- for using as collateral in financial institutions for financing, inter alia, political action committees' financing attorneys to become "bought" judges.

The county treasurer conferred with Don's H & R Block "imported from New Jersey" 1964 taxes preparer just as Don was walking out.

About this time, according to a black ex-policeman/private investigator, $25,000 for a white attorney's compaign to a federal judgeship wrongfully came from the county's department of treasury.

The heavily in debt new nightclub barely passed inspection and was allowed to open without working capital on April 24, 1965.

Five years later amid the county's tripled-plus nightclub competition and scarcity of honest bartenders/waitresses, the 3 Johnsons re-re-refused to fairly incorporate the venture.

Where Engel became a judge in 1967, defendant attorney Culver and the O'Toole firm represented the 3 Johnsons as they secretly negotiated to sell the nightclub to the nearby nightclub corporation competitor's chief who was the top local official for the Grand Rapids, Michigan bartender-waitress union.

While contributing but $28,658 and making a markedly better way of life for themselves, they had solicited and exhausted Don of $300,000+ of his near-total assets (including 5½ years-100 hours per week skilled labor) plus power of attorney #1 into the venture's fair incorporation that was never formed.

Then -- disguised as moneylenders

on the highway and Don's premises -- they foreclosed on Don dba the nightclub utilizing said 4/15/65 Engel-drafted unlawful documents/agreements.

Then they obtained Richard's attorney Culver - dictated fraudulently - begotten 6/26/70 default judgment against Don.

While unaware that Carl-Sr had bought out H. Gibson and in belief that he was not Richard's puppet in the foreclosure suit, Don verbally provided his then-trusted father Carl-Sr with Don's equity in the venture at a special meeting.

A day or so later, Carl-Sr had resulted indigent Don sign Richard's Landman firm's attorney Culver-approved documents putting a new Jay Corp. (Mich) in command.

Don and Carl-Sr were excluded from the Landman-Culver firms-drafted Jay Corp. and its subsequent O'Toole firm-drafted Cal/Carl Corp. (Mich) subsidiary.

Carl-Sr had Don provide him with Don's 8/19-12/4/70 power of attorney #2 as if for properly winding down the venture while Don and his two teenagers used Richard's and Carl-Sr's moneys to take a Greyhound and go onto public welfare-high school for mitigating damages in San Diego from the 1969-70 burglarizing-theft of Don's mobile home/office and music business papers/ corporate seal by Michigan tortfeasors.

The 1964-73 taking of a substantial amount of Don's private properties for public use was authorized by state statutes for the State or under its direction.

No compensation was made or secured to the <u>real</u> "Donald E. Johnson" owner of those private properties taken for public and private use.

> "A judgment of a state court, even if it be authorized by state statutes, whereby private property is taken for the state or under its direction for public use without compensation made or secured to the owner, is wanting in the due process of law required by the 14th Amendment of the United States Constitution." Chicago B. & Q. R. Co. v. Chicago (1897) 41 LEd 979.

When the 3 Johnsons got Don's property in two steps rather than one where a 1964 joint venture was formed did not absolve them of the crime of obtaining money or property by false pretenses where the defendant law firms-drafted, approved, and locked away 1965 "moneylender" false pretense continued to operate up to the 1970 moment of their wrongful attorney Culver-drafted judge Larnard-executed fraudulently begotten default judgment appropriation of the partnership assets contributed by their victim, Don. People v Jones.[94a]

In 1973 and after the state's executive branch refused to prosecute, indigent nonlawyer Don sued in pro per

the 3 Johnsons in a breach of contract-conversion-libel & slander action in the county court.

Abuse Of The Judicial Process

By 1990, the state courts had provided a "bought-with Don's properties" county trial judge (Piercey), provided a partial unfair trial, refused to disqualify the 3 Johnsons' defendant law firm from representing duel interests, granted the 3 Johnsons' unqualified law firm's motion for dismissal for "no cause of action", denied a hearing to settle facts, denied a waiver or suspension of $5,000 transcript cost, lost Don's proofs of indigency, 5 years delayed a statement of facts to appellate courts, provided a "bought-with Don's properties" court of appeals chief judge (Danhof), fraudulently denied an appeal of right, denied Don's motion for extrinsic "fraud upon the courts" relief from the 1974

judgment, lost Don's trial exhibits for weeks and months then found them, ordered Don to remove his evidence from the record, failed to provide all exhibits on removal, combined his 1973 contract-motion for relief action with his 1986 independent action for relief from the 1974 dismissal, granted unqualified law firms' motion for res judicata dismissal of the combined actions without considering Don's evidence, granted unqualified law firms' motion for a fraud-begotten res judicata-dismissal of Don's priority claim against his 1986-deceased father Carl-Sr's $300,000+ estate without considering Don's evidence, and closed the estate!

In 1990, Don timely filed a portion of his original trial court evidence and the black U.S. District Judge -- without considering Don's evidence -- threatened contempt proceedings and

pre-discoveries pretrial granted the nine defendants' motion for res judicata summary disposition of Don's 4th Amended Class Action Complaint for damages based upon federal question 28 USC § 1331(a); interfering with civil rights 42 USCS § 1985(2)(3); copyright infringement 28 USC § 1338(a); and denial of reasonable access, due process, equal protection, just compensation U.S. Constitution Amendments 1,5, and 14.

Said Albert J. Engel had become a court of appeals for the sixth circuit Chief Judge and was still a senior circuit judge.

Don 1991-92 failed to acquire appellate relief where defendants-appellees masquaraded as appellants and unqualified Judge Engel improperly intervened.

The District Judge refused to provide post-appeals relief from extrinsic "frauds

upon the courts" in unequitable extraordinary circumstances.

On 12/19/93, a black ex-policeman and private investigator claimed that he influenced white Don's repeatedly performing 4-6 week engagements 1954-64 in Muskegon.

He also confided how said $25,000 county funds were post-6/64 used to fund a white attorney's becoming a federal judge.

Birds of a feather associate together and where black persons 1959+ raided Don's phono records corporation, the State and the American Federation of Musicians black representative of the president's office 1965+ fabricated a Kandy Tapes & Records Corp. likeness (Kandy Tapes <u>And</u> Records Corp.), and said black AFM representative declined to replace a copy of the 1974-stolen booklet/labor agreement entitling Don

to ownership of his post-1964 stolen Kandy assets, the 1990-94 U.S. District Judge displayed a lack of impartiality by his erroneous judgments, abuses of discretion, frauds upon the courts, and denials of reasonable access-due process-equal protection-just compensation.

In 1993-94, the District Judge again failed to provide post-appeals relief from extrinsic "frauds upon the courts" in unequitable extraordinary circumstances until Don moved for 28 U.S.C.S §§ 144, 455 relief from the Judge, FRCVP 9(b),59,60(b) relief from his 1990-94 decisions, or certification of denial plus the constitutional issue for 28 U.S.C.S. § 1292(b) interlocutory appeal.

Don's required motion and affidavit shows a well-grounded fear that he will not receive a fair trial at the hands of the present District Judge.[182a]

The Judge's denial of relief and

certification caused Don to file an amended notice of appeal and an FRAP 4(a) appeal of right in the 1995 court of appeals on ground of denial of the latest motion for FRCVP 59,60 relief.

In U.S. Supreme Court #94-146, a rehearing of Don's petition for a writ of mandamus to Michigan Supreme Court regarding premature dismissal of Don's estate claim may have been denied on 11/28/94 because the issue of the District Judge's disqualification was not resolved in the lower courts.

The 1995 court of appeals affirmed the Judge's decisions without considering Don's 1101 (725+326) pages joint appendices containing copies of Don's 1974 state trial court evidence, transcripts, and ridiculous "NO JUDGES" state court of appeals decisions where the defendant chief judge had been non-judicially involved in perpetuating

the 3 Johnsons' disguise-moneylaundering substantial moneys owed a federal credit union nightclub creditor.

Don was justified in filing 1974-95 appeals because only the "bought" state 1974 trial judge Piercey had ever reviewed his evidence proving a joint venture, defendants' wrongdoing, damages, etc.

There was interfering with Don's civil rights under color of state law.

A de novo review of the 1990 res judicata summary disposition of Don's 4th amended complaint including Don's evidence was not provided by the 1995 court of appeals on the erroneous ground that the Judge did not abuse discretion.

But for defendants' abuse of the judicial process resulting in a not-impartial District Judge, there would have been answers from all defendants to Don's Requests For Admissions, a first-ever appellate review-with evidence

including the never-used hard-won $5,000 transcript of the state trial court 1974-82 full proceedings, and a 1990-91 federal trial on its merits.

Don contends that he represents a class of all 1964-90 pro se nonlawyer resulted indigent victims of their fiduciaries' "bait and switch" confidence game - abuse of judicial process conspiracies in the State of Michigan.

When the 3 Johnsons went in 1965-95 disguise on the highway and the premises of Don, inter alia, so as to injure Don in his person and property, Don became eligible for recovery of damages against any one or more of the conspirators. 42 USC § 1985(2)(3). Const. Amends. 1,5,14.

Don has an action for damages where he averred that defendant State and its agents, acting arbitrarily, unjustly, and without good reason, refused to

provide him with any compensation for his private properties taken for public use, inter alia, and that such conduct greatly destroyed his properties/liberties and injured him without due process of law and that unjust and arbitrary conduct of defendants set forth denied him equal protection plus just compensation.

And the conned, wiped out, judicial system-used and abused family joint venture investor in a public nightclub-Don continues his 1990 action for the recovery of post-1964 monumental damages.

Please see **Detailed** Statement Of The Case within the Appendix herein.[67a]

ARGUMENT

I. THE DEFENDANT STATE SHALL JOINTLY WITH ITS DEFENDANT AGENTS PROVIDE ITS PUBLIC ENTERTAINER-PUBLIC PHONO RECORDS & COPYRIGHTED SONGS PRODUCER - PUBLIC NIGHTCLUB OPERATOR WITH CONSTITUTION-MANDATED JUST COMPENSATION FOR HIS NEAR-TOTAL PRIVATE PROPERTIES TAKEN FOR PUBLIC USE BY THEIR LONGTIME "BAIT AND SWITCH" CONFIDENCE GAME-ABUSE OF THE JUDICIAL PROCESS CONTINUING ONGOING CONSPIRACIES.

A. THE STATE AND ITS LAW FIRM AGENTS PERPETRATED, DRAFTED, EXECUTED, AND FOR 31 YEARS PERPETUATED THE 3 FAMILY JOINT VENTURERS GOING IN DISGUISE ON THE HIGHWAY AND 4TH VENTURER'S PREMISES AS "MONEYLENDERS WITH HIS VALID PROMISSORY NOTE/MORTGAGE" TO INJURE HIS PERSON AND TAKE HIS LIBERTIES AND PROPERTIES IN VIOLATION OF THE FEDERAL LAWS AND CONSTITUTION.

Law is an embodiment of common sense.

Lawyers, law firms, and judges are officers of the courts which are officers/agents of a state's judicial branch which is an agent of the State.

Defendant law firms and the defendant judge are agents of the defendant State.

Since 1964, the 3 Johnson defendants have been represented by defendant law firms-agents of the State and thus have been "derivative" agents of the State against their family partner, Don.

Don -- a pro se nonlawyer -- is not an agent of the State, his evidence longtime withheld from appellate review proves that he was never given full custody/control of the 3 Johnsons' moneys,

his memos of collateral in the venture to the 3 Johnsons were **not** promissory notes, and he was the sole owner of his private properties taken for public use etc. by the State and its agents including the 3 Johnsons -- including the defendant $300,000+ Carl-Sr estate.

The 3 Johnsons for 25 years 1970-95 continuously jointly with the State and its agents interfered with Don's civil rights in the courts to prevent any compensation.

Family joint venturer Don is the victim of unlawful 1965 state law firm agents-drafted, approved, stored, and executed agreements in the 1964-95 ongoing "bait and switch" confidence game-abuse of the judicial process conspiracies.

The state and federal courts have been corrupted and clogged with this matter since Don's evidence plus $5,000 full transcript of trial court proceedings

was first withheld from appellate review in 1974-75.

The family joint venture investor in a State's public nightclub-Don's damages are monumental and unpaid.

> "'**Confidence Game**' is term of art involving taking of money by fraud from victim by means of trick or deception after victim's confidence has first been secured through some false representation or deception." State v Carr 543 P2d 441,443, 112 Ariz 453.

> "The gist of the crime of conspiracy is the unlawful agreement." Roll v People (1955 Colo) 284 P2d 665.

> "The focus of a civil conspiracy claim is the damage, not the conspiracy itself." Mercer v Jaffe, Snider, Haitt and Hewuer, P.C. (1989 WD Mich) 713 F Supp 1019. (Emphasis added).

Plaintiff Don's allegations are sufficient to provide the State and its agents fair notice that Don's claim of liability is based on the false documents previously described.

Don has at least generally set forth the nature of those documents, and the reasons why they were false or misleading. Don has similarly stated the defendants'

fraudulent intent, reliance on the fraud, and the resulting injury.

The facts pleaded amount to more than a bare legal conclusion. Mercer.[140a]

It was unconstitutional for the state and its agents to deny Don equal protection of laws and deprive him of his properties and liberties without due process of law. Douglas Park Jockey Club v Grainger;[135a] Codd v. Velger.[134a]

The defendant agents must pay just compensation to the plaintiff-owner for his private properties taken for public use. Const. Amend. 5; 42 USC § 1985(2)(3); Webb's Fabulous Pharmacies, Inc., et al v Bukwith.[144a]

The 1970-90 state trial courts judgments that were never provided an appellate review of right-with evidence, even if they were authorized by state statutes, whereby Don's private properties were 1964-73 taken -- for the state's

county and/or political action committee(s) or under its direction for public use without compensation made or secured to owner-Don -- are wanting in the due process of law required by Const. Amend. 14. Chicago B. & Q. R. Co. v. Chicago; Const. Amend. 14;[134a] Foster v. Herley.[136a]

II. THE DISTRICT JUDGE DID ABUSE DISCRETION, THE NONLAWYER'S 1992-94 POST-APPEALS RULES 9(b), 60(b)(5)(6) PLEADINGS WITH CORRUPTION EVIDENCE FOR RELIEF IN UNEQUITABEL EXTRAORDINARY CIRCUMSTANCES WERE NOT FRIVOLOUS SO THE 12/19/90 JUDGMENT DID DESERVE DE NOVO REVIEW, AND THE FRAUDULENT-NO DUE PROCESS 1970 DEFAULT, 1974 NO CAUSE OF ACTION, 1974-94 STATE APPELLATE AFFIRMATIONS, 1990 RES JUDICATA, AND 1991-92 FEDERAL APPELLATE AFFIRMATIONS DID NOT BAR JUST COMPENSATION.

See Detailed Argument II.[145a]

III. AT THE ONSET OF THESE PRE-DISCOVERIES PRETRIAL PROCEEDINGS, DEFENDANT STATE AGENT LAW FIRMS SHALL BE DISQUALIFIED FROM FURTHER POST-1964 DUAL REPRESENTATION OF BOTH THE PUBLIC NIGHTCLUB SELLERS AND THE 3 DEFENDANT JOINT VENTURE BUYERS WHO THEY UNLAWFULLY DISGUISED AS MONEYLENDERS WITH A VALID PROMISSORY NOTE/MORTGAGE FROM THE PLAINTIFF 4TH JOINT VENTURE BUYER WHO THEY JOINTLY CONNED AND DEPRIVED OF HIS CHILDREN, PROPERTIES, CAREER, DUE PROCESS, EQUAL

PROTECTION, AND JUST COMPENSATION.

See Detailed Argument III.[150a]

IV. THE DISTRICT JUDGE'S 1990-94 ERRONEOUS PRE-DISCOVERIES PRETRIAL RES JUDICATA SUMMARY DISPOSITION OF INVESTOR'S 4TH AMENDED CLASS ACTION COMPLAINT AND POST-APPEALS DENIALS OF A FRCVP 9(b),60(b)(5)(6) EVIDENTIARY HEARING OF CORRUPTION IN THE COURTS IN UNEQUITABLE-EXTRAORDINARY CIRCUMSTANCES SHALL BE SET ASIDE FOR ABUSE OF DISCRETION, FRAUDS UPON THE COURTS, AND WANT OF DUE PROCESS-EQUAL PROTECTION.

See Detailed Argument IV.[155a]

V. A NEW DISTRICT JUDGE AND A FIRST-EVER APPELLATE REVIEW OF THE COUNTY'S 1974 "NO CAUSE OF ACTION" DISMISSAL SHALL BE EXPEDITIOUSLY PROVIDED FOR THE PUBLIC PHONO RECORDS-MUSIC PUBLISHING-NIGHTCLUB INVESTOR'S 1990 FEDERAL QUESTION-INTERFERING WITH CIVIL RIGHTS-COPYRIGHT ONGOING ACTION.

See Detailed Argument V.[180a]

VI. THE PRO SE NONLAWYER PUBLIC PHONO RECORDS-MUSIC PUBLISHING-NIGHTCLUB FAMILY JOINT VENTURER -- WHO WAS PROVIDED NO COMPENSATION FOR HIS $300,000 - $1,000,000 1964-73 INVESTED PRIVATE PROPERTIES OR APPELLATE REVIEW-WITH EVIDENCE OF HIS 1973-94 STATE CONTRACT ETC. ACTION -- SHALL BE PROVIDED WITH DEFENDANT STATE AND ITS AGENTS' PROMPT ACCOUNTING OF HIS PROPERTIES TAKEN (1) FOR PUBLIC USE, (2) FOR POLITICAL USE/BUYING JUDGES, AND (3) FOR NONPUBLIC USE.

See Detailed Argument VI[198a]

VII. THE STATE COURTS SHALL TRANSMIT ALL 1970-94 APPLICABLE TRIAL COURT TRANSCRIPTS AND EXHIBITS IN THEIR POSSESSION -- PLUS AN ACCOUNTING OF ANY LOST OR STOLEN -- TO THE DISTRICT COURT.

Fellowship of Christ Church v Thorburn.[135a]

"**Pendent federal jurisdiction -- nonfederal claims** A federal court's judicial power to exercise pendent jurisdiction over a nonfederal claim exists whenever there is a federal claim having substance sufficient to confer subject matter jurisdiction on the court and the relationship between that claim and the nonfederal claims made in the complaint permits the conclusion that the entire action before the court comprises but one constitutional "case"; the nonfederal and federal claims must derive from a common nucleous of operative fact, but if, considered without regard for their federal or nonfederal character, a plaintiff's claims are such that he would ordinarily be expectyed to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is power in federal courts to hear the whole." United Mine Workers v Gibbs (1966 US) 383 US 715, 116 LEd2d 218;, 86 S Ct 1130.

VIII. THE STATE'S "COVERUP" 1970-94 JUDGMENTS AND ORDERS AGAINST THE CONNED AND WIPED OUT NONLAWYER JOINT VENTURER SHALL BE SET ASIDE FOR FRAUDS/UNDUE INFLUENCE UPON THE COURTS AND WANT OF DUE PROCESS-EQUAL PROTECTION-JUST COMPENSATION.

In a civil conspiracy where family fiduciaries never released full custody/ control of their moneys, 10%-heir son's

promissory notes were but memos of collateral in the family joint venture so that he had a valid claim against the estate of his father who had taken his total monumental venture equity worth more than the estate while disguised as a non-joint venturer moneylender-with security of son's promissory note/ mortgage on venture properties. Injunction of State Proceedings §§ 5,7,11 66 LEd2d 903.[137a]

Federal courts must enjoin state courts' dismissing 10% Heir son's claim, distributing defendant estate, discharging defendant Heirs' surety bond, and closing the estate where joint venturer decedent had violated claimant's civil rights by going in disguise on the highway and on claimant's premises disguised as a non-joint venturer moneylender with-promissory note/mortgage and taking claimant's power of attorney plus total

equity worth more than the estate; and state/county, which stood to gain a substantial amount of claimant's private properties taken for public use without just compensation, had not provided claimant with due process-equal protection by failing to provide a fair trial with appellate review of either claimant's civil suit or estate claim against the decedent, et al. Injunction of State Proceedings §§ 5,7,11, supra; Const. Amends.1,5,14.

Don's 1973-89 evidence presented to courts below and organized into 1101-pages joint appendices within the record herein show that state court 1970-89 judgments were fraudulently obtained and are wanting in due process. The enforcement of these decisions can be enjoined by a federal court. Simon v Southern R. Co.;[141a] Fellowship of Christ Church v Thorburn;[135a] Moffett

v Robbins;[140a] In Re Sun Valley Food Co.;[138a] United Mine Workers v. Gibbs;[142a] Amer. Pharmaceutical Ass'n v. U.S. Dept. of Justice, Antitrust Div'n.[132a]

IX. THE DEFENDANT STATE AND ITS LAWYER AGENTS WITH UNDUE INFLUENCE PROCEEDED IN BAD FAITH AND THE PRO SE NONLAWYER-FOR-22-YEARS IS ENTITLED TO COST OF HIS 4-YEARS FEDERAL APPEALS INCLUDING A REASONABLE ATTORNEY FEE.

See Detailed Argument IX.[200a]

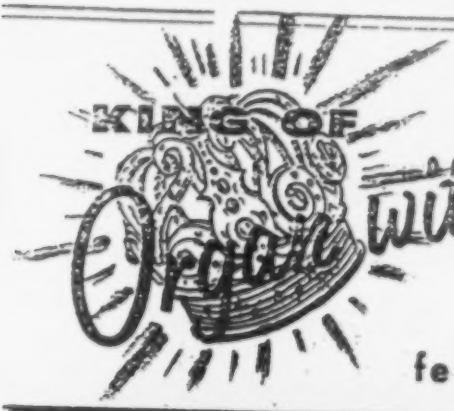
CERTIFICATE: I, Donald Edgar Johnson, do solemnly swear (a) that as a 22-years nonstop pro se nonlawyer, I will conduct myself uprightly and according to law, (b) that I will support the Constitution of the United States; and (c) that relief is not available in any other form or any other court.

Executed on November 8, 1995.

Donald Edgar Johnson

Donald Edgar Johnson, In Pro Per
Counsel for Petitioner

P.O. Box 5407 - Muskegon, MI 49445
Phone: (616) 750-3541



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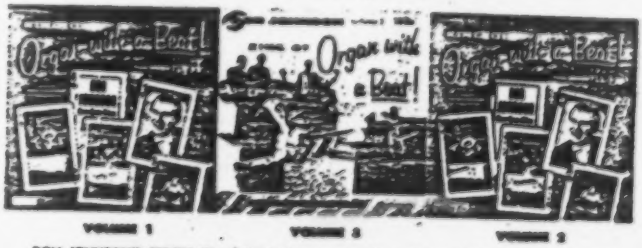

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APPENDIX
(i) COURT OF APPEALS 4/13, 6/27/95 ORDERS:

4/13/95 COURT OF APPEALS:
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DONALD EDGAR JOHNSON, NO. 94-2305
Plaintiff - Appellant

V.

RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON, JR,; ESTATE OF CARL A. JOHNSON, SR.; LAW FIRM PARTNERSHIPS OF LANDMAN, LATIMER, CLINK & ROBB: CULVER, LAGUE & McNALLY; O'TOOLE, STEVENS, JOHNSON, KNOWLTON & ROLF; O'TOOLE, JOHNSON, POTTER, ROLF, GRAFTON & EKLUND, P.C.; STATE OF MICHIGAN; ROBERT J. DANHOF, Michigan Court Of Appeals Chief Judge, jointly and severally,
Defendants - Appellees.

Before: MARTIN and RYAN, Circuit Judges; and GILMORE, District Judge*

The plaintiff appeals the district court's order denying motions to vacate, to reassign the case to another judge, and to reconsider an injunction which prohibited him from filing frivolous pleadings. Now before the court is the plaintiff's motion for a stay of the district court's judgment of December 12, 1990 pending this appeal, a supplement to that motion, and a motion to enjoin state courts from dismissal of his 1986 claim against the defendant estate, along with a request to expedite these proceedings.

Upon consideration, these motions

are DENIED. The merits of the plaintiff's appeal will be considered pursuant to this court's rules and procedures.

---

*The Honorable Horace W. Gilmore, United States District Judge for the Eastern District of Michigan, sitting by designation."

6/27/95 COURT OF APPEALS:

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DONALD EDGAR JOHNSON, NO. 94-2305
Plaintiff - Appellant

V.

RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON, JR,; ESTATE OF CARL A. JOHNSON, SR.; LAW FIRM PARTNERSHIPS OF LANDMAN, LATIMER, CLINK & ROBB: CULVER, LAGUE & McNALLY; O'TOOLE, STEVENS, JOHNSON, KNOWLTON & ROLF; O'TOOLE, JOHNSON, POTTER, ROLF, GRAFTON & EKLUND, P.C.; STATE OF MICHIGAN; ROBERT J. DANHOF, Michigan Court Of Appeals Chief Judge, jointly and severally,
Defendants - Appellees.

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BEFORE: MARTIN and SILER, Circuit Judges, and JOINER, District Judge.*

Donald Edgar JOhnson, a pro se Michigan resident appeals a district court order denying his motion to set aside the court's previous orders filed pursuant to Fed. R. Civ. P. 59 and 60.

The case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P 34(a).

On December 19, 1990, the district court dismissed Johnson's civil rights complaint filed pursuant to 42 U.S.C. § 1985. Johnson's civil rights action arose from a dispute that Johnson had with his family in the mid-1960's. The dispute led to litigation and a trial in the state courts of Michigan. A judgment adverse to Johnson was ordered by the Michigan trial court in December 1974.

Johnson appealed the district court's 1990 decision and this court affirmed the dismissal. Johnson v. Johnson, No. 91-1160, 1991 U.S. App. LEXIS 17922, at *2 (6th Cir. July 29, 1991, cert. denied, 502 U.S. 1059(1992). In 1992, Johnson moved to alter the 1990 judgment pursuant to Fed. R. Civ. P. 60(b). The district court denied the motion and this court affirmed. Johnson v. Johnson, No. 92-1829, 1992 U.S. App. LEXIS 34749, at *4-5 (6th Cir. Dec. 23, 1992).

Johnson then filed numerous documents with the district court. A magistrate judge ordered that the documents be struck from the record as frivolous. Johnson moved the district court to reconsider the magistrate judge's decision. The district court denied the motion. Johnson then filed a Rule 59 motion for reconsideration of this decision and a Rule 60(b) motion for reconsideration of the December 19, 1990 decision. The district court denied both motions as meritless.

In his timely appeal, Johnson's brief raises aa plethora of issues. He requests oral argument and has moved the court to void a 1994 state court decision.

The court reviews the denial of Rule 60(b) motion for an abuse of discretion. See Williams v Browman, 981 F2d 901, 903 (6th Cir. 1992) (per curiam). A Rule 60(b) motion may not be used as a substitute for an appeal, and thus, the underlying judgment is not reviewed. See Browder v. Director, Dept't of Corrections, 434 U.S. 257, 263 n.7 (1978). As for Johnson's Rule 59 motion, the court will consider the merits of the district court's order as this decision

is subject to appellate review. Peabody Coal Co. v Local Union Nos. 1734, 1508 and 1534, UMW, 484 F2d 78,81 (6th Cir. 1973), cert. denied after subsequent appeal, 430 U.S. 940 (1977).

Upon review, we conclude that the district court did not abuse its discretion in denying Johnson's Rule 60(b) motion. As Johnson is attempting to have the district court reconsider its December 19, 1990 order dismissing his civil rights complaint and that order has been affirmed on direct appeal and in a previous Rule 60(b) motion, the district court did not abuse its discretion to denying Johnson's second Rule 60(b) motion. As for Johnson's appeal of the denial of his Rule 59 motion, it is clear that the pleadings in question were in fact frivolous and the district court did not err in affirming the magistrate judge's decision.

Johnson contends that the district judge was biased. The legal standard to establish judicial bias requires the facts to be such as would convince a reasonable person that bias exists. See United States v Story, 716 F2d 1088,1090 (6th Cir. 1983). Johnson has

presented no evidence, nor do the facts indicate, that the district judge was biased. The argument is meritless.

Finally, a court possesses an inherent authority to sanction a party who has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. Chambers v. NASCAO Inc., 501 U.S. 32, 43-46 (11991). Johnson's current appeal represents his third attempt before this court to vacate the 1974 state court judgment. Should Johnson continue to file frivolous appeals involving the 1974 decision, the court may impose sanctions against him.

Accordingly, we deny the request for oral argument, deny the motion to void the state court dismissal, and affirm the district court's order. Rule 9(b)(3), Rules of the Sixth Circuit.

*The Honorable Charles W. Joiner, United Staters District Judge for the Eastern District of Michigan, sitting by designation."

(ii) 12/19/90 - 11/8/95 DISTRICT JUDGE'S PLUS COURT OF APPEALS' OPINION, JUDGMENT, AND ORDERS.

12/19/90 DISTRICT JUDGE'S OPINION: [293]

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION
DONALD EDGAR JOHNSON,
Plaintiff, 1:90-CV-175

v.
RICHARD GORDON JOHNSON et al.,
Defendants.

OPINION

This civil rights action alleging a violation of Title 42 United States Code Section 1985 is the latest chapter in the continuing saga of Donald Edgar Johnson's dispute with his brothers, their father, their attorneys, the State of Michigan, and Michigan Court of Appeals Judge Robert J. Danhof. Pending before the Court are various motions to dismiss this matter as well as various motions filed by the plaintiff.

A dispute arose between the plaintiff, Donald Edgar Johnson, and his father and brothers sometime in the mid-1960s. The dispute led to litigation and a trial was held by the Muskegon County Circuit Court. A judgment adverse to the plaintiff was entered by that court on December 9, 1974. The plaintiff failed to perfect a timely appeal with the Michigan Court of Appeals. Thereafter, the plaintiff unsucessfully petitioned the circuit court on several occasions for relief from the December 9, 1974 judgment.

Unlike most unsucessful litigants, the plaintiff refused to accept the fact

that he had lost his case. Rather, with a degree of perseverance rarely seen in even pro se litigants, he has sought to collaterally attack the merits of the circuit court judgment in a number of forums.

The plaintiff, apparently to support the merits of this action, has compiled for the court what appears to be all of the orders entered by this court and others in response to his quixotic attempts to have the original circuit court decision vacated.[1] This compilation reveals that numerous appeals have been presented by the plaintiff to the Michigan Supreme Court and Court of Appeals.[2] It also reveals that all of these appeals were summarily denied. The plaintiff's dossier also contains the denial of a petition for certiorari by the United States Supreme Court. Furthermore, it indicates that following the death of his father, a defendant in the original circuit court action, the plaintiff unsuccessfully attempted to collaterally attack the original judgment by filing a claim against the estate and appealed the dismissal of his claim without success. Finally, the dossier also

indicates that this Court has rejected the plaintiff's allegations on at least three other occasions and that these decisions were affirmed by the Sixth Circuit.

All of the defendants argue that the plaintiff's latest attempt to attack the circuit court judgment is, like the previous ones, barred by the doctrine of res judicata. This doctrine "is founded upon the generally recognized public policy that there must be some end to litigation and that when one appears in court to present his case, is fully heard, and the contested issue is decided against him, he may not later renew the litigation in another court." Heiser v. Woodruff, 327 U.S. 726, 733 (1946). Thus, a judgment on the merits in a prior suit involving the same parties or their privies bars a second suit based on the same cause of action. E.G., Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981). Moreover, even if a party believes that a judgment was blatantly incorrect, he may not commence a second action. Rather, he must seek appellate review of the matter.

After reviewing the pleadings in

this matter, the Court believes that the plaintiff's "civil rights" complaint is simply the latest attempt to attack the judgment entered by the circuit court back in 1974. The doctrine of res judicata prohibits such an attack. Therefore, the defendants' motions to dismiss are granted and the plaintiff's fourth amended complaint is dismissed with prejudice.

Furthermore, the Court strongly advises the plaintiff, as others have in the past, that this litigation is over and his attempts to overturn the decision of the circuit court are futile. Unfortunately, given the number of times this matter has been presented to this Court and others in the past sixteen years, the Court believes that the plaintiff will not heed this advise. Therefore, the plaintiff will be enjoined from submitting any further documents or pleadings regarding this matter with this Court and the Court's clerk will be enjoined from accepting such documents or pleadings from him.

DATED: December 18, 1990. /s/BENJAMINF.GIBSON
U.S. DISTRICT JUDGE

[1] The dossier contains eighty orders that have been issued by seven different courts.

[2] According to the plaintiff, one of the orders issued by the Michigan Court of Appeals permitted him to file an independent action alleging fraud upon the Court. See Mich. Ct. R. 2.612(C)(3), 7.206(B)(3). Following the entry of that order, the plaintiff filed such an action in the Muskegon County Circuit Court against his father and brothers. The trial court granted the defendants' motion for summary disposition and dismissed the complaint. The dismissal was affirmed by the Michigan Court of Appeals on appeal and the Michigan Supreme Court declined to review the case."

12/19/90 DISTRICT JUDGE'S JUDGMENT: [291]

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION
DONALD EDGAR JOHNSON
Plaintiff,
1:90-CV-175
v.
RICHARD GORDON JOHNSON,
et al.,
JUDGMENT

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 18th day of December, 1990.

PRESENT: HON. BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE

In accordance with the Opinion dated December 18, 1990, IT IS HEREBY ORDERED that the defendants' motions to dismiss are GRANTED and the plaintiff's **complaint** is DISMISSED with prejudice.

IT IS FURTHER ORDERED that all motions filed by the plaintiff are DENIED.

IT IS FURTHER ORDERED that the Clerk of the United States District Court for

of the United States District Court for the Western District of Michigan is ENJOINED from accepting from the plaintiff any pleadings or documents seeking to collaterally attack the judgment entered by the Muskegon County Circuit Court in File No. 73-7432-CK.

IT IS FURTHER ORDERED that the plaintiff is ENJOINED from filing any pleadings or documents seeking to collaterally attack the judgment entered by the Muskegon County Circuit Court in File No. 73-7432-CK. Failure to comply with this Order on the part of the plaintiff may result in a finding that he is in contempt of this Court.

IT IS SO ORDERED." (Emphasis added).

7/29/91 COURT OF APPEALS: 839

"No. 91-1160

UNITED STATES COURT OF APPEALS
FOR THE SIXTHCIRCUIT

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

FILED JUL 29 1991
LEONARD GREEN,Clerk

v.

RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON, JR.; THE ESTATE OF CARL A. JOHNSON, SR.; THE LAW FIRM PARTNERSHIP OF LANDMAN, LATIMER, CLINK AND ROBB; CULVER, LAGUE AND MCNALLY; O'TOOLE, STEVENS, JOHNSON, KNOWLTON AND ROLF; STATE OF MICHIGAN; O'TOOLE, JOHNSON, POTTER, ROLF, GRAFTON AND EKLUND, P.C.; ROBERT J. DANHOF, Michigan Court of Appeals

O R D E R

Chief Judge,
Defendants-Appellees.

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BEFORE: KEITH and NORRIS, Circuit Judges, and WEBER, District Judge.*

Donald Edgar Johnson, a pro se Michigan citizen, appeals the district court's judgment dismissing his action filed pursuant to 42 U.S.C. § 1985 for failure to state a claim. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary relief, Johnson sued the estate of his father, his brothers, several law firms, and a state court judge. Johnson alleged that the defendants had conspired against him during various state and federal court proceedings. The district court determined that Johnson's claims were barred by res judicata and dismissed the case for failure to state a claim.

the case for failure to state a claim. Johnson has filed a timely appeal.

Upon review, we determine that the district court properly dismissed Johnson's case for failure to state a claim. Construing the complaint in the light most favorable to Johnson, and accepting all the factual allegations as true, we determine that Johnson undoubtedly can prove no set of facts in support of his claims that would entitle him to relief. Meader v. Cabinet for Human Resources, 902 F.2d 474, 475 (6th Cir.), cert. denied, 111 S. Ct. 182 (1990).

Accordingly, we affirm the judgment for the reasons set forth in the district court's judgment filed on December 18, 1990. Rule 9(b)(3), Rules of the Sixth Circuit."

9/27/91 COURT OF APPEALS:

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

FILED SEP 27 1991
LEONARD GREEN, Clerk

v.

RICHARD GORDON JOHNSON, ET AL.,
Defendants-Appellees

ORDER

BEFORE: KEITH and NORRIS, Circuit Judges; and WEBER*, United States District Judge.

The court having received a petition

for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/Leonard Green, Clerk

*Hon. Herman J. Weber sitting by designation from the Southern District of Ohio"

4/17/92 DISTRICT JUDGE'S ORDER: 874

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION
DONALD EDGAR JOHNSON
Plaintiff,
1:90-CV-175
v.
RICHARD GORDON JOHNSON,
et al.,
Defendants

ORDER REJECTING PLEADINGS

Judgment in this action was entered December 18, 1990 granting defendants' motion to dismiss the complaint.

Plaintiff subsequently appealed to the United States Court of Appeals for the Sixth Circuit and the decision of this court was affirmed. The Supreme Court thereafter apparently denied plaintiff's petition for a writ of certiorari, and on March 9, 1992, denied plasintiff's petition for rehearing.

Plaintiff now seeks to file in this court an emergency motion for an evidentiary hearing to determine if defendants perpetrated a fraud on the court(s) by mischaracterizing the nature of the plaintiff's evidence prior to the December 18, 1990 judgment and thereafter. Plaintiff has also attempted to file four supplements to his emergency motion which he seeks to file.

Plaintiff's emergency motion and the supplements to it will not be accepted for filing, since a final judgment has already been entered dismissing this action and the case is no longer pending in this or any other federal court. Rule 12(f), Federal Rules of Civil Procedure; W.D. Mich. L.R.24(h).

To the extent that plaintiff may seek to construe this as a Rule 60(b) motion challenging this court's December

18, 1990 judgment, it is untimely. Such motions when predicated on "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party," must be made within one year. Rule 60(b), FRCP. The court notes that the plaintiff contends that he was prohibited from filing a motion to reconsider the December 18, 1990 judgment, at the time it was entered, due to the injunctive language in the judgment prohibiting him from collaterally attacking a previous state court judgment. A careful reading of that language, however, clearly shows that it did not preclude plaintiff from taking further action under the Federal Rule of Civil Procedure regarding his federal case. (Indeed, if pla: intiff really believed that he had been barred from filing anything further in regard to his federal case, he would not have filed the present motion).

Upon due consideration, plaintiff's motion and supplemtary material are not accepted for filing in this court.

IT IS SO ORDERED." /s/ Benjamin F. Gibson,
Chief Judge

5/8/92 DISTRICT JUDGE"S ORDER:[880]

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

DONALD EDGAR JOHNSON
Plaintiff,

CASE NO. 1:90-CV-175

v.

RICHARD GORDON JOHNSON, et al.,
Defendants

ORDER REJECTING PLEADINGS

The Court has examined the following proposed pleadings(s) and order the Clerk to reject the proposed pleading(s) and to return it to the offering party for the reasons quoted below:

DATE RECEIVED: April 27, 1992

PLEADING TITLE/FILER: Filed by plaintiff - Emergency motion for change in venu and in the alternative, to alter the order denying a Rule 60(5)(6) evidentiary hearing re defendants' 1990-92 frauds upon the court with brief

REASON: A final judgment has been entered dismissing this action and the case is no longer pending in this or any other federal court.

If the offering party wishes to resubmit a corrected pleading, a copy of this order should accompany the resubmitted pleading.

IT IS SO ORDERED.

Dated: May 6, 1992. /s/Benjamin F. Gibson
Chief U.S. District Judge"

5/22/92 DISTRICT JUDGE'S ORDER:[881]

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

DONALD EDGAR JOHNSON
Plaintiff,

CASE NO. 1:90-CV-175

v.

ESTATE OF CARL A. JOHNSON,SR.

Defendants

ORDER REJECTING PLEADINGS

The Court has examined the following proposed pleadings(s) and order the Clerk to reject the proposed pleading(s) and to rreturn it to the offering party for the reasons quoted below:

DATE RECEIVED: May 12, 1992

PLEADING TITLE/FILER: Supplement To Reply To Petition To Determine Distribution Has Been Made/Johnson

REASON: **The cover letter refers to case number 1:90-cv-175. The pleading refers to file number 86-59607-SE of State of MI Probate Court, Muskegon County. Case number 1:90-cv-175 is closed. A final judgment has been entered dismissing this action and the case is no longer pending in this court.

IT IS SO ORDERED.

Dated: May 21, 1992. /s/Benjamin F. Gibson
Chief U.S. District Judge"

6/3/92 DISTRICT JUDGE'S ORDER:[882]

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

DONALD EDGAR JOHNSON
Plaintiff,

CASE NO. 1:90-CV-175

v.

RICHARD GORDON JOHNSON, et al.,
Defendants

ORDER REJECTING PLEADINGS

The Court has examined the following proposed pleadings(s) and orders the Clerk to reject the proposed pleading(s) and to return it to the offering party for the reasons quoted below:

DATE RECEIVED: May 26, 1992

PLEADING TITLE/FILER: Plaintiff's emergency motion for declaratory judgment.

REASON: This case is closed. A final judgment has been entered dismissing this action and the case is no longer pending in this court.

IT IS SO ORDERED.

Dated: June 2, 1992. /s/Benjamin F. Gibson
Chief U.S. District Judge"

6/29/92 DISTRICT JUDGE'S ORDER: 897

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

DONALD EDGAR JOHNSON
Plaintiff,

CASE NO. 1:90-CV-175

v.

RICHARD GORDON JOHNSON, et al.,
Defendants

ORDER REJECTING PLEADINGS

The Court has examined the following proposed pleadings(s) and order the Clerk to reject the proposed pleading(s) and

to return it to the offering party for the reasons quoted below:

DATE RECEIVED: June 12, 1992

PLEADING TITLE/FILER: Plaintiff's motion for injunction (second time) and no brief attached.

REASON: This case is closed. A final judgment has been entered dismissing this action and the case is no longer pending in this court.

If the offering party wishes to resubmit a corrected pleading, a copy of this order should accompany the resubmitted pleading.

IT IS SO ORDERED.

Dated: June 15, 1992./s/Benjamin F. Gibson
Chief U.S. District Judge"

12/23/92 COURT OF APPEALS: 906

No. 92-1829

UNITED STATES COURT OF APPEALS
FOR THE SIXTHCIRCUIT

DONALD EDGAR JOHNSON and Class of Pro Se Nonlawyer Alleged Confidence Game Victims,

Plaintiff-Appellant,

V.

RICHARD GORDON JOHNSON, jointly and severally; CARL ALFRED JOHNSON, JR., jointly and severally; CARL A. JOHNSON, SR., the Estate of, jointly and severally; THE LAW FIRM PARTNERSHIPS OF LANDMAN, LATIMER, CLINK AND ROBB, jointly and severally; CULVER, LAGUE AND MCNALLY, jointly

FILED
DEC 23 1992
Leonard Green, Clerk

(no entry date)

O R D E R

and severally; O'TOOLE, STEVENS, JOHNSON, KNOWLTON AND ROLF, jointly and severally; STATE OF MICHIGAN, jointly and severally; O'TOOLE, JOHNSON, POTTER, ROLF, GRAFTON AND EKLUND, P.C., jointly and severally; ROBERT J. DANHOF, Michigan Court of Appeals Chief Judge

Defendants-Appellees

BEFORE: KENNEDY and BATCHELDER, Circuit Judges, and ENGEL, Senior Judge.

Plaintiff, Donald Edgar Johnson, a pro se Michigan citizen, moves for miscellaneous relief on appeal from three separate district court orders rejecting various pleadings filed subsequent to a final judgment entered December 19, 1990, dismissing plaintiff's civil action filed pursuant to 42 U.S.C. § 1985. Plaintiff also appeals an order from the Muskegon County Probate Court. Additionally, the defendants have filed motions to dismiss the appeal for lack of subject matter jurisdiction. The defendants also request costs and attorney fees. Plaintiff has filed as response. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Plaintiff initiated his civil action against the estate of his father, his two brothers, several law firms, and a Michigan state court judge, claiming that the defendants conspired against him through various judicial processes in the state and federal courts since 1974. The district court determined that plaintiff's claims were barred by res judicata and dismissed plaintiff's complaint for failure to state a claim. This court affirmed the district court's judgment in an order filed July 29, 1991 and denied plaintiff's petition for rehearing en banc in an order filed September 2, 1991. On January 21, 1992, the United States Supreme Copurt denied certiorari.

Thereafter on April 27, 1992, the district court received a pleading entitled, "Emergency Motion For Change In Venue; And In The Alternative, To Alter The Order Denying A Rule 60(b)(6) Evidentiary Hearing Re Defendants' 1990-1992 Frauds Upon The Courts." On May 8, 1992, the district court entered an order rejecting the pleading for the reason that a final judgment had been entered dismissing plaintiff's action.

On May 12, 1992, the district court received a pleading entitled, "Supplement To Reply To Petition To Determining Distribution Has Been Made." The district court rejected this pleading in an order entered May 22, 1992, also for the reason that a final judgment had been entered dismissing plaintiff's case. Finally, on May 26, 1992, the distict court received a pleading entitled, "Emergency Motion For Declaratory Judgment." On June 3, 1992, the district court entered an order rejecting this pleading for the same reason as stated in the prior orders of May 8, 1992 and May 22, 1992.

We construe this appeal as an appeal from three separate district court orders denying plaintiff relief sought pursuant to Fed. R. Civ. P. 60(b). An abuse of discretion standard applies to a decision rendered under Rule 60(b). In re Salem Mortg. Co., 791 F.2d 456, 459 (6th Cir. 1986); Smith v Secretary of Health and Human Services, 776 F.2d 1330, 1332 (6th Cir. 1985); Windsor v. United States Dep't of Justice, 740 F.2d 1330, 1332 (6th Cir. 1985); Windsor v. United States Dep't of Justice, 740 F.2d 6, 7 (6th Cir. 1984) (per curiam); Reviewing courts

will find an abuse of discretion in the denial of a Rule 60(b) motion only if there is a definite and firm conviction that the court committed a clear error of judgment. Davis v. Jellico Community Hospitao, Inc., 912 F.2d 129, 133 (6th Cir. 1990). A Rule 60(b) motion cannot be used as a substitute for an appeal, and thus an appeal from an order denying Rule 60(b) relief does not bring up for review the underlying judgment. Browder v. Direct, Dep't of Corrections, 434 U.S. 257, 263 n.7 (1978); Hopper v. Euclid Manor Nursing Home, Inc., 867 F.2d 291, 294 (6th Cir. 1989).

Upon review, we conclude that the district court did not abuse its discretion when it rejected plaintiff's post-judgment pleadings. In each of the submitted pleadings, plaintiff attempted to relitigate issues previously decided adversely to him. A final judment has been entered dismissing plaintiff's action, that decision has been affirmed by this court and a petition for certiorari has been denied by the Supreme Court. Thus, no clear error of judgment on the part of the districtg court exists in this case.

Additionally, the order from the Muskegon County Probate Court is not appealable to this court. Thus, we do not review that appeal.

For the foregoing reasons, the defendants' motions to dismiss and request for costs and attorney fees are denied, plaintiff's motions for miscellaneous relief are denied, and the district court's orders of May 8, 1992, May 22, 1982, and June 3, 1992 are affimed pursuant to Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
/s/ Leonard Green, Clerk"
(Emphasis added).

913

1/5/94 DISTRICT JUDGE'S ORDER:

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

DONALD EDGAR JOHNSON
Plaintiff,

1:90-CV-175

v.

RICHARD GORDON JOHNSON, et al.,
Defendants

MEMORANDUM OPINION and INJUNCTIVE ORDER

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 3rd day of January, 1994.
PRESENT: HON. BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE

This matter is once again before the Court on plaintiff's recently filed pleadings (nos. 140, 141, and 142)

requesting relief under Federal Rule of Civil Procedure 59(e) and requesting the Court to issue summons forms and grant leave to file an amended complaint. An examination of the pleadings reveals that they were drafted By the pro se plaintiff without so much as a clue as to what the law is governing modification of judgments under Rules 59 and 60. The pleadings make no effort to justify relief under these rules since they completely ignore their content. The plaintiff has made a habit of such filings. The plaintiff's complaint--which was filed on February 27, 1990 sought to reopen litigation that was previously exhausted in the state courts. The complaint was dismissed by judgment of This Court of December 18, 1990. The dismissal was upheld by the Sixth Circuit Court of Appeals by its mandate of October 15, 1991. Despite this fact, the plaintiff has continued to file various requests regarding the closed case since October 15, 1991. Since that date, the Court has rejected by separate orders some 15 pleadings filed by the plaintiff seeking relief to which he was not entitled.

Plaintiff's continual filing of these pleadings has placed an administratie burden on this Court, as well as the clerk's office. As the Supreme Court has noted, the courts have a responsibility to see that judicial resources are properly allocated and conserved. In re McDonald, 489 U.S. 180,184 (1989). Rule 11 also requires courts to sanction the filing of meritless pleadings. Although the courts are understandably more indulgent with pro se litigaants, this indulgence has its limits. As the Fifth Circuit has noted, "That [a plaintiff's] filings are pro se offers [plaintiff] no impenetrable shield [to sanctions], for one acting pro se has no license to harass others, clog the judicial machinery with meritless litigation, and abuse a lready overloaded court dockets." Farguson v MBank Houston, N.A., 808 F2d 358,359 (5th Cir. 1986).

When faced with similar situations, other federal courts have enjoined further filings. See Farguson, supra; Kaufhold v. Cauthen, 152 Bankr. 149 (Bankr. S.D. Tex. 1992). Such action is authorized both under Rule 11 and the general power of the courts to protect themselves from

abusive filings. Id. In Farguson, the Fifth Circuit approved an order enjoining the plaintiff from filing further actions against the defendants based on matters set forth in the prior complaint. In Filipas v. Lemons, 835 F.2d 1145,1146 (6th Cir. 1987), the Sixth Circuit approved an even broader injunction prohibiting the filing of any lawsuit by the plaintiff without prior leave from the court. In making a determination as to the appropriate sanction, the Court is mindful that it should not unduly restrict plaintiff's access to court and should make its injunction as narrow and specific as possible. See Farguson, Supra.

Therefore, IT IS HEREBY ORDERED that plaintiff DONALD EDGAR JOHNSON's motions contained in pleadings no. 140, 141, and 142 are DENIED.

IT IS FURTHER HEREBY ORDERED that plaintiff DONALD EDGAR JOHNSON shall refrain from filing in this Court further complaints or pleadings relating to claims against the defendants made in this lawsuit (except for an appeal of this injunction, or any filing as to which the plaintiff first obtains leave from

a United States Magistrate, which leave shall be granted if the accompanying request is not frivolous or made in bad faith).

IT IS FURTHER ORDERED that the clerk's office shall not accept from the plaintiff for filing further pleadings in this case (except for an appeal of this injunction, or in the event that plaintiff first obtains leave from a United States Magistrate). IT IS SO ORDERED."

9/27/92 DISTRICT JUDGE'S ORDER:[946]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN - SOUTHERN DIVISION

DONALD EDGAR JOHNSON, Plaintiff, File No. 1:90-CV-175

v MEMORANDUM OPINION & ORDER

RICHARD GORDON JOHNSON, et al., Defendants.

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan,this 23rd day of September,1994. PRESENT: HON. BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE.

This matter is before the court on the appeal of Donald Edgar Johnson (pleadings no. 165-170, 173, 191-198) from the orders of the magistrate judge (pleadings no. 157-160) determining that previously filed pleadings were frivolous and should be rejected.

This Court has reviewed these matters

and determined that the pleadings filed by the plaintiff were frivolous in that they provided no appropriate basis for reconsidering the judgment in this matter pursuant to Federal Rules of Civil Procedure 59 or 60. Therefore, the magistrate judge was correct in his judgment that the pleadings should be rejected pursuant to the Court's previous injunction. The Court also warns the plaintiff that should he continue to file such frivolous pleadings in the future with the magistrate judge or this Court he will subject himself to possible penalty for contempt under Title 18 United States Code Section 401.

Accordingly, the decision of the magistrate judge rejecting said pleadings as frivolous is AFFIRMED.

IT IS SO ORDERED. /s/Benjamin F.Gibson
U.S. DIstrict Judge

11/8/94 DISTRICT JUDGE'S ORDER: T010

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN - SOUTHERN DIVISION

DONALD EDGAR JOHNSON, File No. 1:90-CV-175
Plaintiff,

v

RICHARD GORDON JOHNSON, et al.,
Defendants.

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 4th day of November, 1994.

PRESENT: HON. BENJAMIN F. GIBSON, U.S. DISTRICT

JUDGE.

This matter is before the Court on the motion of plaintiff Donald Edgar Johnson to reconsider the Court's previous orders denying him relief under Federal Rules of Civil Procedure 59 and 60, to reassign this closed case to another judge, and to reconsider the Court's injunction prohibiting plaintiff from filing frivolous pleadings.

Plaintiff's asserted basis for such motions is that the undersigned judge is biased against him such that the case should be reassigned pursuant to Title 28 United States Code Sections 144 and 455. Plaintiff's only basis for so asserting is that the Court has repeatedly ruled against him as to the many motions he has filed. The record, however, supports that the Court has done so only because the motions were without merit and did not warrant relief. The record further supports the necessity of enjoining the plaintiff from filing further frivolous pleadings.

Therefore, the Court determines that there is no appropriate legal basis for reassignment of this closed case nor for the other relief requested.

Accordingly, plaintiff's motion (pleading no. 205) is DENIED. IT IS SO ORDERED."

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(iii) COURT OF APPEALS 6/5, 8/25/95 DENIALS OF RECONSIDERATION AND REHEARING.

6/6/95 COURT OF APPEALS:

"UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DONALD EDGAR JOHNSON
Plaintiff-Appellant,

v. No. 94-2305

RICHARD GORDON JOHNSON, et al,
Defendants-Appellees.

The plaintiff moves for reconsideration of an order which denied his motion for a stay of the district court's judgment. Upon consideration, we note the original order incorrectly stated that the judgment wich the plaintiff sought to stay was entered on December 12, 1990, when in fact it was entered on December 19, 1990. In all other respects, however, the motion to reconsider is DENIED."

8/25/95 COURT OF APPEALS:

"No. 94-2305
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DONALD EDGAR JOHNSON, FILED AUG25 1995
Plaintiff-Appellant, LEONARD GREEN,Clerk

v. O R D E R

RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON,JR.; ESTATE OF CARL A. JOHNSON, SR.; LAW FIRM

PARTNERSHIPS OF LANDMAN, LATIMER, CLINK AND ROBB; CULVER, LAGUE AND MCNALLY; O'TOOLE, STEVENS, JOHNSON, KNOWLTON & ROLF; O'TOOLE, JOHNSON, POTTER, ROLF, GRAFTON & EKLUND, P.C.; STATE OF MICHIGAN; ROBERT J. DANHOF, Michigan Court of Appeals Chief Judge, jointly and severally,
Defendants-Appellees.

BEFORE: MARTIN and SILER, Circuit Judges, and JOINER, District Judge.*

Upon consideration of the petition for rehearing filed by the appellant, It is ORDERED that the petition for rehearing be, and it hereby is, DENIED.

ENTERED BY ORDER OF THE COURT
/s/ Leonard Green, Clerk

*The Honorable Charles W. Joiner, United States District Judge for the Eastern District of Michigan, sitting by designation.

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(iv) STATE COURTS 1970 DEFAULT, 1974 DISMISSAL, 1976-82 APPEAL DENIED, 1983 REMOVE EVIDENCE, 1983 MOTION FOR RELIEF REJECTED, 1984 INDEPENDENT ACTION FOR RELIEF BLOCKED, 1986 MOTION AND NEW INDEPENDENT FOR RELIEF ACTIONS WERE COMBINED, 1986 COMBINED ACTIONS DISMISSED, 1988 CLAIM DISMISSED-ESTATE CLOSED, AND 1988-94 APPELLATE COURTS AFFIRMATIONS WITHOUT APPELLATE REVIEW OF TRIAL COURT 1974-82 EVIDENCE.

6/26/70 STATE TRIAL COURT: 580

STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF MUSKEGON
CALENDARED ENTERED

RICHARD G. JOHNSON, Plaintiff
v. Case No. C-4921
DONALD E. JOHNSON, Defendant DEFAULT JUDGMENT

The default of Donald E. Johnson, defendant in the above cause, having been regularly entered pursuant to G.C.R. 520, the defendant having failed to appear in said action,[570] and the damages of plaintiff having been regularly assessed by the Court at $35,835.29;

THEREFORE, IT IS ORDERED AND ADJUDGED that there is due to the plaintiff upon the note and mortgage mentioned and set forth in the complaint, for principal and interest and unpaid real estate taxes, the sum of $35,835.29 and that the said defendant, is personally liable for the payment thereof; that the said defendant pay or cause to be paid, to the said plaintiff, the sum so as aforesaid decreed to be due to the plaintiff with the interest thereon, at the rate of six percent (6%) per annum from this date, and the cost of the said plaintiff expended in this suit of $33.80, to be taxed for the proceedings taken and had in this cause to foreclose the mortgage aforesaid, on or before the 12th day of January, 1971, and is default therof, that all and singular the said mortgaged premises mentioned in the complaint in this cause, and hereinafter described

or so much thereof as may be sufficient to raise the amount so as aforesaid decreed to be due to the plaintiff with the interest thereon and the cost in this case, and the cost and expenses of sale, and which may be sold separately without material injury to the parties interested, be sold at public auction by or under the directions of District Judge Charles E. Silky of the 59th District Court for the County of Muskegon, pursuant to G.C.A. 745, at any time after the said 12th day of January, 1971; that the said sale be made in the County of Muskegon; that the said District Judge give public notice of the time and place of such sale, according to the course and practice of this Court, and the statute in such case made and provided, and that the plaintiff, or any of the parties in this cause, may become the purchasers; that the said District Judge execute a deed to the purchaser of the said premeses, on the said sale; and that the said District Judge, out of proceeds of said sale, pay to the plaintiff, $33.80 cost in the suit to be taxed, and also the amount so decreeed to be due as afforesaid, and the interest

thereon at the rate of six per (6%) per annum from the date of this judgment, or so much thereof as the amount realized from the sale of premises aforesaid will pay of the same; and that the said District Judge take receipt for the amount so paid, and file the same with the report of such sale and of his doings thereon; and that he bring the surplus monies arising from said sale, if there be any, into this Court without delay, to abide the further order of this Court. * * *

The description and particular boundaries of the property authorized to be sold under and by virtue of this judgment so far as the same can be ascertained from the mortgage above referred to or from the complaint in this cause, are situated in the City of Muskegon Heights, County of Muskegon, State of Michigan and are more particularly described as follows, to-wit:

Parcel 1. Commence 254.25 feet South and 82.5 feet West of Northeast corner of Government Lot 4 of Section 8, T 9 N, R 16 W, thence South 0° 08' West 314.1 feet for place of beginning, thence North 89° 24' West 225 feet, thence South 0° 08' West 118.84 feet, thence South 89° 52' East 225 feet, thence North 0° 08' East 117 feet to the point of beginning.

Parcel 2. Commence 254.24 feet South and 82.5 feet West oof Northeast corner of Government Lot 4, Section 8, T 9 N, R 16 W, thence South 0° 08' West 431.1 feet for point of beginning, thence North 89° 52' West 320 feet, thence South 0° 08' West 190 feet, thence South 89° 52' East 320 feet, thence North 0° 08' East 190 feet to place of beginning, both parcels being situated in the City of Muskegon Heights, in the County of Muskegon, and State of Michigan.

Dated: June 26, 1970 /s/ Charles A. Larnard
Circuit Court Judge"

"Merged in Judgment[585] - PROMISSORY NOTE

$20,600 Muskegon, Michigan
April 15, 1965.

ON OR BEFORE three (3) years from the date hereof, I, Donald E. Johnson, PROMISE TO PAY

TO THE ORDER OF Harry E. Gibson and Richard G. Johnson, or to the survivor of them, Trustees, the sum of TWENTY THOUSAND SIX HUNDRED DOLLARS---------- $20,600.00

For value received together with interest at the rate of six per cent (6%) per annum from and after the date hereof, payable monthly.

This note and the interest to be paid at Hackley Union National Bank & Trust Company, Muskegon, Michigan or at such other place as payees shall from time to time designate.

This Promissory Note is secured by a mortgage of even date herewith which said mortgage encumbers the vendees interest of payor under a certain land contract dated March 22, 1965, between Lee Christensen and wife, Henriette, Walter F. Clark, Jr. and wife Margaret, Anthony Scalici and wife Louise M. and Herbert M. Biermacher and wife Dorothy M. as first party

and Donald E. Johnson as second party and payees shall have the right to declare the entire balance of principal and interest hereunder immediately due and payable in event that payor shall be in default in the performance in any of his obligations under the said land contract referred to or in the event that payor shall be in default under the terms of this Note.

The makers and endorsers of this Note do each severally waive presentment for payment, protect, and notice of dishonor.

UNSIGNED[585]

Filed 6/22/70 Donald E. Johnson

12/9/74 STATE TRIAL COURT:

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

"You have tried to translate fatherly, motherly, brotherly, concern for your interest into some kind of a joint venture * * * This was never a joint venture * * * And as far as I am concerned, you rested * * * You may not have ever used that form -- the words: 'I rest'; but -- * * * You have been saying it for two weeks, and I'm through! (Whereupon **the Judge walked off the Bench.**)" 12/9/70 Hearing Before Judge Piercey (2/9/95 Brief Addendum p 1a). (Emphasis added).

12/9/74 STATE TRIAL COURT:[520]

"S T A T E O F M I C H I G A N
IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON
FILED 1974 DEC 9 PM 2:44

* * *

DONALD EDGAR JOHNSON,
Plaintiff,
v.
CARL ALFRED JOHNSON, SR.,
et al,
Defendants.

File No. 73-7432-CK

J U D G M E N T

Donald Edgar Johnson
In Propria Persona

William F. McNally (P 17533)
Attorney for Defendants

At a session of said Court held in theCounty Building in the City of Muskegon County and State aforesaid, on the 9th day of December, 1974.
PRESENT: /S/ JOHN H. PIERCEY, CIRCUIT JUDGE

The above entitled action having come on for trial, the plaintiff having presented evidence and rested his case, the defendants having moved for Judgment at the end of plaintiff's case, the Court being fully advised in the premises, and the Court having made findings of fact and conclusions of law,

IT IS ORDERED, that defendants' Motion be and hereby is granted and Judgment of No Cause of Action be entered in favor of the Defendants, with costs and statutory attorneys fees being taxed against plaintiff, plaintiff not having proven the allegations contained in his complaint for the reasons set out in the opinion of the Court rendered in open court.

/S/ JOHN H. PIERCEY, CIRCUIT JUDGE
Countersigned: /s/James C. Shields, Jr.,
Deputy Clerk.

Approved as to Form:

__UNSIGNED__

Donald Edgar Johnson
Plaintiff
4984 Grand Haven Road
Muskegon, Michigan 49441

/s/ William F. McNally
William F. McNally, of
LANDMAN, HATHAWAY,
LATIMER, CLINK & ROBB
Attorneys for Defendants
500 Hackley Bank Bldg.
Muskegon, Michigan 49443

I HEREBY CERTIFY that this copy to be a true and correct copy of the original on file with the office of COUNTY CLERK. This Certified Copy VALID only When SEAL And RED SIGNAYURS Are Affixed. /s/ Margaret H. Greenwood, MUSKEGON COUNTY CLERK."

2/5/76 STATE COURT OF APPEALS: [80]

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, * * *

DONALD EDGAR JOHNSON

Plaintiff-Appellant,

v

CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR.,
Jointly and severally,
Defendants-Appellees

Present the Honorable
Robert J.Danhof

Docket #22496
L.C. #73 C-7432 CK

"...IT IS FURTHER ORDERED that this appeal be, and the same is hereby DISMISSED without prejudice to the filing of an application for delayed appeal pursuant to GCR 806.4 after the full transcripts of the proceedings have been filed **in the trial court**..."

11/23/82 STATE COURT OF APPEALS: [82]

"AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, * * *

DONALD EDGAR JOHNSON

Plaintiff-Appellant,

v

CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON, and CARL ALFRED JOHNSON, JR., Jointly and severally,

Defendants-Appellees

Present the Honorable **NO JUDGES !**

NO Judges

Docket #59895

L.C. #73 C-7432 CK

[P]laintiff-appellant has filed an emergency application for leave to file a delayed appeal of a judgment entered on December 9, 1974 * * * IT IS ORDERED that the application be, and the same is hereby DENIED for lack of jurisdiction * * * His failure to file an appropriate record in No. 22496 resulted in dismissal of that claim of appeal, without prejudice to filing a delayed appeal pursuant to GCR 1963, 806.4(2) and upon filing full transcripts **with this court**. See order dated February 5, 1976. Plaintiff-appellant's failure to file any transcripts with the Court until October 2, 1979, resulted in an order denying an application for leave to file a delayed appeal dated October 23, 1979."

4/20/83 MICHIGAN SUPREME COURT:[83]

"* * *

DONALD EDGAR JOHNSON

Plaintiff-Appellant,

v

CARL ALFRED JOHNSON, SR.,

RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR.,
Jointly and severally,
Defendants-Appellees

No. 71091

COA #59895
L.C. #73 C-7432 CK

On order of the Court, the application in propria persona for leave to appeal is considered and it is DENIED, because the Court is not persuaded that the questions prsented should be reviewed by this Court."

5/4/83 STATE TRIAL COURT:[83]

"State of Michigan
IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON
DONALD EDGAR JOHNSON,
Plaintiff,
v.
CARL ALFRED JOHNSON, SR.,
et al,
Defendants.

File No. 73-7432-CK

* * * Please see attached Emergency Motion. This matter is scheduled for Friday, May 13, 1983 at 2:30 pm. You will please make necessary arrangements to have a District Court Judge present to hear this motion, as well as pleas which I am advised you have previously scheduled. I am aware of a previoius Judge Piercey Order denying Plaintiff an opportunity to file any pleadings. I am setting aside this Order to allow plaintiff his day in court. /s/ Ronald H. Pannucci."

5/10/83 STATE TRIAL COURT:[84]

"State of Michigan
IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON
DONALD EDGAR JOHNSON,
Plaintiff, File No. 73-7432-CK
v.
CARL ALFRED JOHNSON, SR.,
et al,
Defendants.

The court has reconsidered the May 4, 1983 memorandum. It is therefore ORDERED that the May 10, 1982 Order signed by Judge Piercey is re-instated. The clerk is instructed to return all pleadings and fees. /s/Ronald H. Pannuci, Chief Circuit Judge."

6/29/83 STATE TRIAL COURT:[85]

"State of Michigan
IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON
DONALD EDGAR JOHNSON,
Plaintiff, File No. 73-7432-CK
v.
CARL ALFRED JOHNSON, SR.,
et al,
Defendants.

"...IT IS HEREBY ORDERED all exhibits in the possession of the Court Records be picked up by the Plaintiff, Donald Edgar Johnson, by Friday, July 1, 1983, 12:00 o'clock noon; and he is to sign a prepared receipt therefore, or this Court will order them removed and/or destroyed in accordance with the General

Court Rule so providing... /s/ Michael E. Kobza, Circuit Court Judge."

11/29/83 STATE COURT OF APPEALS:[242]
"AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of **Detroit.** * * *

Honorable
JOHN H. SHEPHERD
Presiding Judge
MICHAEL J. KELLY
WILLIAM R.BEASLEY
Judges

Plaintiff-Appellant,
v
CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON, and CARL ALFRED JOHNSON, JR., Jointly and severally,
Defendants-Appellees

Docket #50565
L.C. #73 C-7432 CK

In this cause plaintiff-appellant has filed an application for rehearing of this Court's order of September 23, 1983, granting the motion for immediate consideration and denying the application for leave to appeal, and no answer to the application for rehearing having been filed, and due consideration of the foregoing having been had by the Court,

IT IS ORDERED that the application for rehearing be, and the same, is hereby DENIED for the reason that **more than one year having elapsed from the time of judgment, plaintiff is required to file an independent action.** GCR 1963, 528.3."

1/30/84 STATE SUPREME CT. 269

"AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 30th day of January
* * *

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
v. SC: 73254
CARL A. JOHNSON, SR.,
COA:50565
RICHARD GORDON JOHNSON, and
LC:73-C7432-CK
CARL ALFRED JOHNSON, JR.,
Jointly and severally,

Defendants-Appellees.

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court."

2/15/84 STATE TRIAL CT. 86,711

STATE OF MICHIGAN

"IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

DONALD EDGAR JOHNSON,
Plaintiff,
vs. File No. 73-C-7432-CK
CARL A.JOHNSON, SR.,
RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR.,
Jointly and Severally,
Defendants.

...Felony (criminal) complaints may only be issued by the Prosecuting Attorney. (Not D. Johnson). /s/ M. Kobza."

9/20/84 CT OF APPEALS **NO JUDGES**[243]
AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Lansing, on the 19th day of September in the year of our Lord one thousand nine hundred and eighty four.

Present the Honorable

Presiding Judge

Judges

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
v No.78170
CARL A. JOHNSON, SR.,
RICHARD GORDON JOHNSON, and LC: No. 73C7432CK
CARL ALFRED JOHNSON, JR.,

Defendants-Appellees.

In this cause an application for leave to appeal is filed by plaintiff-appellant, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the application be, and the same is hereby DENIED for lack of merit in the grounds presented..."

10/31/84 CT OF APPEALS **NO JUDGES**[86]
AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Lansing, on the 31st day of October in the year of our Lord one thousand nine hundred and eighty four.

Present the Honorable

Presiding Judge

Judges

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
v No.78170
CARL A. JOHNSON, SR.,
RICHARD GORDON JOHNSON, and LC: No. 73C7432CK
CARL ALFRED JOHNSON, JR.,
Defendants-Appellees.

In this cause, an application for rehearing of this Court's order of September 20, 1984, denying an application for leave to appeal having been filed by plaintiff-appellant, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court; IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED for lack of merit in the grounds presented. IT IS FURTHER ORDERED that the Clerk is directed to refuse to accept for filing any further pleadings in this matter from plaintiff-appellant, including a filing of an application for rehearing of this order. GCR 1963, 816.5."

2/4/86 CT OF APPEALS **NO JUDGES**[245]
"AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Lansing, on the 3rd day of February in the year of our Lord one thousand nine hundred and eighty six.

Present the Honorable

Presiding Judge

Judges

DONALD EDGAR JOHNSON,
Plaintiff,
v

No.880008

MUSKEGON CIRCUIT JUDGE,
CARL ALFRED JOHNSON,
RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR.,
LANDMAN LATIMER CLINK & ROBB, Law Firm Partnership, and William F. McNally,
Defendants.

In this cause a complaint for superintending control and motion for immediate consideration are filed by plaintiff, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED that the motion for immediate consideration be, and the same is hereby GRANTED. IT IS FURTHER ORDERED that the complaint for superintending control be, and the same is hereby DENIED for lack of merit in the grounds presented.

Judge Shepherd would order pursuant to MCR 7.206(B)(3) that the Muskegon County Circuit Court shall allow plaintiff to file an **independent action based upon alleged fraud upon the Court,** MCR 2.612(C)(3), provided that the requisite

fees and costs are either paid, waived, or suspended. By allowing plaintiff to file an independent action below, this Court expresses no opinion on the form and content of the pleadings which may be filed, merits of plaintiff's action or any defenses which may be raised."

5/7/86 STATE TRIAL COURT:[225]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

DONALD EDGAR JOHNSON,
Plaintiff,
vs.
RICHARD GORDON JOHNSON
CARL ALFRED JOHNSON, JR.
and ESTATE OF CARL A.
JOHNSON, SR., Jointly and Severally,
Defendants.

File No: **86-21207-CZ**
(to be **consolidated with** File No. **73-C-7432-CK**)

STATEMENT BY COURT AND ORDER **CONSOLIDATING ACTION WITH PRIOR CAUSE OF ACTION** AND ORDER PROHIBITING FILING OF FURTHER COURT DOCUMENTS

* * *

Dated: May 7, 1986

/s/ Michael E. Kobza
Chief Circuit Judge"

6/20/86[229] **STATE TRIAL COURT JUDGMENT ORDER:**

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

DONALD EDGAR JOHNSON,
Plaintiff,
vs.
RICHARD GORDON JOHNSON
CARL ALFRED JOHNSON, JR.
and ESTATE OF CARL A.
JOHNSON, SR., Jointly and Severally,
Defendants.

File No: **86-21207-CZ**

DONALD EDGAR JOHNSON, In Pro Per

FRED C. CULVER, JR. (P-12381)
Attorney for Defendants Richard Gordon Johnson and Carl Alfred Johnson, Jr. - Culver, Lague & McNally, 500 Terrace Plaza, Muskegon Michigan 49443, Telephone 616/725-8148

THOMAS J. O'TOOLE (P-18558)
Attorney for Defendant Estate of Carl A. Johnson, Sr. * * *

IT IS ORDERED that Muskegon County Circuit Court Action **73-C-7432-CK be consolidated with the instant case 86-21207-CZ,** and IT IS FURTHER ORDERED, in accordance with this Court's findings on the record, together with this Court's Opinion and Order of May 7, 1986, that plaintiff's claims be dismissed with full prejudice, but without costs, and plaintiff's emergency motion and objection to the entry of this judgment order are denied, and IT IS FURTHER ORDERED that plaintiff not submit any further documents or pleadings to be filed in Muskegon Circuit Court in these consolidated matters.

/s/ MICHAEL E. KOBZA, Circuit Judge"

3/3/88STATE COURT OF APPEALS: 253

STATE OF MICHIGAN - COURT OF APPEALS

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
v No.92822
RICHARD GORDON JOHNSON,
CARL ALFRED JOHNSON, JR., and
THE ESTATE OF CARL A. JOHNSON, SR.,

Defendants-Appellees.

BEFORE: G.R.McDonald, P.J., M.M. Doctoroff and R. Robinson*, JJ. PER CURIAM

Plaintiff appeals as of right from a June 20, 1986 order granting defendants' motion for **summary disposition** pursuant to MCR 2.116(C)(8) and dismissing plaintiff's complaint * * * Summary disposition was proper. Plaintiff also seeks an order directing the lower court to deliver to this Court the 1974 trial exhibits. However, plaintiff's failure to cite any authority in support of his request precludes appellate review of the same. * * * Moreover, because summary disposition was proper, this issue has become moot. Affirmed."

4/25/88 STATE PROBATE COURT:[231]

STATE OF MICHIGAN

IN THE PROBATE COURT FOR THE COUNTY OF MUSKEGON

In the Matter of the Estate of CARL A. JOHNSON, SR., Deceased

File No. 86-59607-SE

ORDER ALLOWING SECOND ANNUAL AND THIRD AND FINAL ACCOUNTS OF PERSONAL REPRESENTATIVE, DISMISSING CLAIM, ALLOWING FEES OF FIDUCIARY AND OF ATTORNEYS, PAYMENT OF PARTIAL DISTRIBUTION, DISCHARGING SURETY BOND, ASSIGNING RESIDUE, AND CLOSING OF ESTATE.

PRESENT: Hon. Tom H. Linck, Neil G. Mullally, Judge of Probate JUDGE...* * * April 26, 1988..."

2/2/89 MICHIGAN SUPREME COURT:[274]

"ORDER Michigan Supreme Court

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
v. SC: 83419
RICHARD GORDON JOHNSON, COA: 92822
CARL ALFRED JOHNSON, JR. AND LC:86-59607-SE
THE ESTATE OF CARL A. JOHNSON, SR.,
Defendants-Appellees.

On order of the Court, the delayed application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court."

4/14/89 MICHIGAN SUPREME COURT:[275]

"ORDER Michigan Supreme Court

* * * 83419

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
v. SC: 83419
RICHARD GORDON JOHNSON, COA: 92822
CARL ALFRED JOHNSON, JR. AND
THE ESTATE OF CARL A. JOHNSON, SR.,
Defendants-Appellees.

AMENDMENT TO ORDER

On order of the Court, the orders of February 2, 1989 and March 29, 1989 are hereby amended to correct a clerical error by correcting the notation of the lower court docket number to read as follows:

'LC: 86-21207-CZ'"

7/7/89 STATE COURT OF APPEALS: 257

STATE OF MICHIGAN - COURT OF APPEALS

In the Matter of the **Estate** of
CARL A. JOHNSON, SR., Deceased JUL 07 1989

DONALD EDGAR JOHNSON, No.108452
Claimant-Appellanlt
v.
FMB LUMBERMAN'S BANK, Personal Representative of the Estate of Carl A. Johnson, Sr., Deceased, RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., RANDY JOHNSON, and DARLYN JO MONTOYA,
Petitioners-Appellees.

Before: **Danhof**, C.J., and Wahls and Griffin, JJ. PER CURIAM.

...The res judicata doctrine provides that, where two parties have fully litigated a particular claim and a final judgment has resulted, the claim may not be relitigated by either party. * * * There are **three** prerequisites to the application of the res judicata doctrine: (1) there must have been a prior decision on the merits; (2) the issues must have been resolved in the first action, either because they were actually litigated or because they might have been presented in the first action; and (3) both actions must be between the same parties or their privies.* * * Affirmed."

11/29/89 MICHIGAN SUPREME COURT: 276

"Michigan Supreme Court
Lansing, Michigan

Order

In re Estate of CARL A. JOHNSON, SR., Deceased

DONALD EDGAR JOHNSON,
Claimant-Appellant,

SC: 87252
COA: 108452

v.

LC: 86-59607-SE

FMB LUMBERMAN'S BANK, Personal Representative of the Estate of Carl A. Johnson, Sr., Deceased, RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., RANDY VAN JOHNSON, and DARLYN JO JOHNSON
Petitioners-Appellees.

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court."

2/25/94 MICHIGAN SUPREME COURT: 916

"Michigan Supreme Court
Lansing, Michigan

Order

Entered February 25, 1994

Michael F. Cavanagh
Chief Justice * * *

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

SC: 97521
COA: 158359

V

LC: 92-29070-AV

Estate of CARL A. JOHNSON, SR.,
Defendant-Appellee.

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions

presented should be reviewed by this Court.

I, CORBIN R. Davis, Clerk of the Michigan Supreme Court certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.
20222 SEAL
February 25, 1994 /s/ Corbin R. Davis,Clerk"

4/29/94 MICHIGAN SUPREME COURT:[917]
Reconsideration denied

==========

(v) RE FEDERAL QUESTIONS RAISED

Between 12/9/74 and 6/20/86, plaintiff Don raised federal questions regarding an unfair trial, denial of materials necessary for an appeal of right, and an evidentiary hearing for determining that the 12/9/74 dismissal for no cause of action was procured and prolonged by 3 Johnsons' plus their Landman law firm's frauds upon the courts and the court's denial of due process-equal protection.

When Don 12/9/74 sought a waiver or suspension of transcript cost, defendants lied that Don could afford his own. The court of appeals affirmed.

The state Supreme court denied leave to appeal.

When Don personally 9/5/75 delivered his motion to the court of appeals with proof of indigency, the motion disappeared. The ex parte motion for speedy decisions was not entered or filed in court of appeals #22496.

> "On 9/4/75, plaintiff filed proof of his being single, broke, living alone, and constantly seeking meaningful employment to qualify for Muskegon public workfare #K6133244A and raise $5,000 transcript cost. Defendants' counsel received a copy as did trial court; **but the Court of Appeals #22496 motion mysteriously disappeared from that court's files per 10/7/81 affidavit**/motion. Pet'n for Certiorari to "Danhof" Mich. App. Ct., S. Ct. #88-2116, p 17.[82]

On 2/5/76, Chief Judge Danhof's court of appeals #22496 ordered that the full $5,000 transcript had to be filed in trial court,[80]

> "...IT IS FURTHER ORDERED that this appeal be, and the same is hereby DISMISSED without prejudice to the filing of an application for delayed appeal pursuant to GCR 806.4 after the full transcripts of the proceedings have been filed **in the trial court**..." 2/5/76 "Danhof" State Court Of Appeals #22496 Order.[80] (Emphasis added).

Between 11/5/76 and 8/29/80, Don was granted leave to proceed in forma pauperis in WD Michigan SD District Court where said Albert J. Engel was a district judge. But Judge W. A. Miles granted 3 Johnsons defendants-Landman firm motion to dismiss Don's attempt to remove the cause where state courts were not providing indigent Don with materials necessary for reasonable access to a timely appeal of right from the 12/9/74 judgment.[v]

On 3/14/78, "Engel's" U.S. Court of Appeals labeled Don's appeal frivolous.[v,300]

On 1/18/79, defendant court of appeals #22496 chief judge Robert J. Danhof denied a second application for rehearing of the 8/10/79 denial of disqualification of 3 Johnsons' Landman law firm.[80]

As Judge Piercey was holding post-judgment 1975-82 trial court

hearings, Plaintiff piecemeal filed the $5,000 hard-won full transcript in trial court and filed an application for a delayed appeal of right.

On 11/23/82, the "Danhof" court of appeals' **"NO Judges"** denied jurisdiction for Don's emergency application for a delayed appeal of right contrary to the court of appeals 2/5/76 order.

> "[T]hat the application be, and the same is hereby DENIED for lack of jurisdiction in the court of appeals, GCR 1963, 806.2(5). Plaintiffappellant's application seeks delayed review of proceedings which terminated in a judgment adverse to him on December 9, 1974. His failure to file an appropriate record in No. 22496 resulted in dismissal of that claim of appeal, without prejudice to filing a delayed appeal pursuant to GCR 1963, 806.4(2) and upon filing full transcripts with this court. See order dated February 5, 1976..."

Then, on top of that 11/22/92 "fraud on the courts" while bearing in mind that plaintiff was post-indigency gainfully employed for but $120 weekly and Judge Piercey didn't even file his statement of facts in the court of appeals

until 1979, the court further wrongfully ordered:[82]

> "Plaintiff-appellant's failure to file any transcripts with the Court until October 2, 1979, resulted in an order denying an application for leave to file a delayed appeal dated October 23, 1979. Because this application also is outside the 18 months rule of GCR 1963, 806.2(5), it is likewise DENIED for lack of jurisdiction."

And the state Supreme Court #71091 4/20/83 denied leave to appeal.[83] And Judge Piercey resigned from the bench in April, 1983.

Plaintiff's petition for certioraris were denied in 1976, 1978, and 1982.

> "...Petitioner, who had petitioned this Court in 1976, 1978, and 1982 for interlocutory decisions,[95] wrote to U.S. Supreme Court 85-357..." 6/23/89 Pet'n For Certiorari 88-2116 To Michigan Supreme Ct 83419+86327, Ct of Appeals 92822+108452, Circuit Ct 73C7432+ 8621207, And Probate Ct 8659607.[40]

When plaintiff and his assistant attorney filed a 5/3/83 motion for "fraud upon the courts" relief,[696] Piercey's replacement #1, Judge Pannucci, scheduled a **DUE PROCESS-EQUAL PROTECTION evidentiary hearing.**[704] But defendant Landman

partnership filed its 5/6/83 "fraud upon the court" that the court had no jurisdiction.[705] And the hearing was cancelled.[83,84,707] And Don protested and requested the hearing not be cancelled.[706]

On 5/20/83 in state trial court, Don filed an Emergency Request that the Order denying an evidentiary hearing be rescinded.

> "Said Order ... condones 3 men and their agents' taking substantial government property plus a man's total worldwide substantial properties, child custody, and basic Constitutional rights -- under false pretenses! This is a mockery of justice and the Constitution and grounds for appeal to the Supreme Court of the United States if necessary!"

On 5/26/83, Piercey's replacement #2, Judge Kobza threatened contempt proceedings if plaintiff attempted to file further pleadings not concerned with appeal.[84]

On 6/23/83, state Supreme Court denied reconsideration.[83]

On 6/29/83 on heels of weeks/months of being "lost", Judge Kobza ordered Don's 1974 trial evidence to be picked up.[85]

On 11/29/83,[242] a Detroit -- not Grand Rapids -- court of appeals panel mandated that plaintiff file an independent action.

On 1/30/84, the state Supreme Court denied leave.[269]

On 2/24/84, Petitioner wrote Michigan Supreme Court #73254 after it had 1/20/84 denied leave to appeal:[86]

> "By its denying access 2/6-2/21/84 of plaintiff's independent action, these two (trial court) judges failed to uphold Constitution Amendments[94] 1,5, and 14. And review was declined. 6/23/89 Pet'n For Certiorari 88-2116 To Michigan Supreme Ct 83419+86327, Ct of Appeals 92822+108452, Circuit Ct[40] 73C7432+ 8621207, And Probate Ct 8659607.

On 9/20/84, **NO JUDGES** court of APPEALS #78170 denied plaintiff's application for leave to appeal for lack of merit in the grounds presented.[243]

On 10/31/84 **NO JUDGES** COURT OF APPEALS #78170 denied rehearing and ordered no more papers be filed in this matter.[86]

On 2/4/86 **NO JUDGES** court of appeals #880008 denied superintending control over the judge, defendants, their law firm, and their attorney.[245] A Judge Shepherd suggested an independent action.

When Don 2/10/86 filed his second independent action for relief, Landman firm's derivative defendant Culver and O'Toole partnerships lied that Don's independent action deserved a res judicata summary disposition as if the matter had already been provided a full and fair opportunity to litigate and was already litigated.

On 5/7 and 6/20/86, plaintiff's 2/10/86 independent action was combined with his 4/27/73 contract-motion for relief action and res judilcata summarily dismissed without a requested evidentiary

hearing.[225,229]

On 3/3/88, a per curiam court of appeals #92822 affirmed without an evidentiary hearing.[253]

On 4/25/88, state probate trial court #86-59607-SE dismissed Don's claim, allowed fees to defendant law firms, allowed partial distribution, discharged surety bond, assigned residue, and closed the defendant estate without allowing a "fraud upon the courts" evidentiary hearing.[231]

On 2/2/89 and 4/14/89, state Supreme court denied leave to appeal the court of appeals 3/3/88 decision.[274,275]

On 7/7/89, court of appeals #108452 chief judge Danhof's per curiam affirmed the probate trial court's dismissal-closing of the estate, by referring to the 3/3/88 decision based upon res judicata based on the State's requiring but **three** --not four like federal --

prerequisites:[257]

> "...There are **three** prerequisites to the application of the res judicata doctrine: (1) there must have been a prior decision on the merits; (2) the issues must have been resolved in the first action, either because they were actually litigated or because they might have been presented in the first action; and (3) both actions must be between the same parties or their privies..."

After several partial days' interrupted half-way trial speeding up on vital testimony-slowing down on lesser events, the record shows that "bought" Judge Piercey **walked off the bench** and granted defendants' motion for dismissal before plaintiff could fully and fairly present the (joint venture) issue in question or remaining issues (fraudulently -begotten 6/26/70 Default Judgment, no promised fair incorporation, conversion, and libel & slander, damages, etc.) for resolution. And there was no fourth prerequisite that there must have been a full and fair opportunity for plaintiff to litigate the issue in question. Detroit

Police Officer Ass'n v Young.

On 11/29/89, the state Supreme court #87252 denied leave to appeal said court of appeals affirmation of probate court giving nearly all of plaintiff's moneys to the undeserving 3 Johnsons, their law firms, their attorneys, etc.[276]

On 2/25/94, the state Supreme Court denied leave to appeal probate court's, circuit court's, and court of appeals' premature dismissal of plaintiff's claim-closing defendant estate pending his federal civil rights action against the estate, et al.[916] (Reconsideration was denied on 4/29/94).

On 11/28/94, the U.S. Supreme Court #94-146 denied a petition for rehearing of Don's petition for extraordinary writ to the Michigan Supreme Court #97521 concerning defendant estate after learning that the lower courts had not yet ruled on his motion for disqualification of

Judge Gibson.[1042]

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(vi) OTHER MATERIAL:

DETAILED STATEMENT OF THE CASE

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Upper Number[00] = Court of Appeals Appendices pp 0-1101

Upper Number[00a] = Appendix Pages Herein

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Since 1941 at Ann Arbor, Michigan, petitioner has been (and is) a member in good standing of the American Federation of Musicians (AFM).

In 1955, petitioner-plaintiff-appellant-ex-W.W. II U.S. Army Transport Services Officer-traveling phono records producer-entertainer (Don herein) founded and presided over Kandy Tapes & Records Corp. (Indiana).

In 1956, "Donald E. Johnson" and the president of the American Federations of Musicians in New York both signed an "AFM title booklet" phonograph records

labor agreement that there would be no transfer of Kandy Tapes & Records Corp. phono records assets without signatures of approval by both president Don and the AFM president.

Kandy Tapes & Records Corp. (Ind-AFM) was worthless without Don-produced phono records assets. There was no Kandy Tapes And Records Corp. presided by Don anywhere. Don-produced "DON JOHNSON King Of ORGAN WITH A BEAT!" tapes and records were among first pop organ stereo tapes/records and his "FIVE FOOT TWO EYES OF BLUE" instrumental made Billboard Top 10 plus worldwide distribution.

But a black lady, Annie Blakemore, distributed them at the RCA-Indianapolis factory with varied billings and various phono record companies sprang up with names resembling "Kandy" -- while Don gave his all to promoting coast-to-coast his records that would sell for years

and years worldwide.[172]

In 1960, an ex-catholic priest and realtor Anthony J."Tony" Mark -- who would 1964-65 set non-catholic Don into a family confidence game -- threw a 3/60 Ft. Lauderdale, Fla. party of congradulations attended by Don's father, Carl-Sr, Don's mother, Don, and Don's wife, Wanda Lee (Kisskadden) Johnson.

On 5/20/60, Don's 1954-wife and Kandy corporate officer deserted him -- and 3/61 their two children, aged 4 and 6, -- to secretly live with a Bill Hoffman at her mother's Pennsylvania home while drawing weekly checks from Don.

And when she knowingly refused to phone or meet expenses-paid in Chicago with Don and attorney Dick Shelton in 1961 for preparing annual report(s) to Indiana, Don became sole owner because she resigned/abandoned/deserted Kandy.

Both Don's and her Pennsylvania attorneys urged Don not to waste time and money fighting her fraudulent (that Don deserted her) 4/62 divorce because Don and his attorney-acquired "Schultz" evidence would come to Don's rescue. (She never sued Don).

Defendant Richard Johnson's said realtor Mark attempted to sell Don a DiGiovanni Muskegon Heights tax-laden nightclub #1 for $100,000 in 1962.

In 1964, defendants and/or realtor Mark allegedly perpetrated the "bait and switch" confidence game conspiracy herein and secretly conspired with Muskegon County Treasurer Paul Vitek to steal Don's Kandy Tapes & Records Corp.

Realtor Mark dba Sun Agency told Don that he had obtained $35,000 stock in a new Sun Agency, Inc., Dick Greenwald-president, with office to be

in FMB Lumberman's Bank building.

Defendant Richard Johnson stopped working with Carl-Sr and Carl-Jr's Port City Machine & Tool Co. (Inc) and began his 8/64-new Johnson Mold & Mfg Co. Corp.

Realtor Mark had worked with Richard for converting his home into a shopping center.

Don's father and 2 brothers (3 Johnson defendants) promised Don a better way of life if he would settle himself and his 2 motherless children in Muskegon where Don owned a lakeside lot-with utilities for his mobile home/office/ studio.

On 9/5/64, the 3 Johnsons agreed to back Don with their moneys: Carl-Sr $8,000; Richard $4,000; Carl-Jr $4,000; and Don about $3,000 minimum.

Don's father, Carl-Sr, directed Don to leave his mobile home/office/studio in San Diego storage temporarily. Richard

mandated that he appoint the nightclub insurer.

On 9/25-9/28/64 as Don was preparing to depart for a 5-weeks Illinois engagement, Richard pooled his $4,000 towards a required $6,000 Muskegon Bank & Trust Co (MBTC Escrow) to qualify for a "resort" 9 months nightclub state liquor license.[752A,752H]

Carl-Jr (CJII) pooled $1,100 in the MBTC Escrow.[752A,752H]

Don pooled $900 in the MBTC Escrow.[752A]

And there was $6,000 in the MBTC Escrow which was in Richard's -- not Don's -- custody.[752-A]

"Cash 9/28 MBTC Escrow DJ 900-debit 900-credit
" " " " RJ 4000-debit 4000-credit
" " " " CJII 1100-debit 1100-credit"

Richard and Carl-Jr did not pass their moneys to Don saying, "Here, take my money. Give me your promissory note. And go buy yourself a nightclub of your

choice".

And they didn't go forward until receiving Carl-Sr's OK in meetings secret from Don.

On 9/28, Don followed realtor Mark's instructions to have the office of then-Muskegon Heights Municipal Judge John H. Piercey to provide Richard with Don's power of attorney #1 for negotiating terms of a nightclub purchase while Don would be employed out of the state.[393]

Realtor Mark baited Don with an $18,000 -- not $32,000+ -- cost of nightclub licenses.

About 10/1/64, Don cashed in his Bankers Life (Des Moines) insurance, added wages, pooled $2,000 more into the $6,000 MBTC Escrow pool, and issued a 9/25 (date of verbal agreement) memo of collateral to Richard reducing Richard's $4,000 to $2,000.[752A,752H]

"9/_ RJ (Bankers Life Ins.) approx DJ 1400-debit 1400-credit

10/1 RJ (Wages Thru 10/1) DJ 435-debit 435-credit
" RJ (Wages DJ 165-debit 165-credit"

On 11/5/64, $1,000 of the MBTC Escrow plus Don's $200 went to realtor Mark and **the nightclub purchase in Richard's name** -- not Don's name -- **began.**[414-419, 425,752A]

When Don quit a gainful steady $430/30 hours/week traveling entertainer career by refusing to take another engagement during his 11/64 Cheboygan, Michigan engagement, he fulfiled his promise with consideration and **there began a contract between Don and the 3 Johnsons** whereby they would provide Don with a better way of life.

And Don began investing his total assets plus power of attorney #1 for fair equity in a family phono records-music publishing-nightclub joint venture to be incorporated utilizing his Kandy Tapes & Records Corp. (Ind-AFM) and Kandy Music Publishers (BMI)

REPONDENTS TOOK PETITIONER'S PRIVATE PROPERTY FOR PUBLIC USE WITHOUT ANY JUST COMPENSATION WHEN THEY 1965-1970 DEPRIVED HIM OF TITLE TO HIS KANDY TAPES & RECORDS CORP.

CONTAINING "JOHNSON'S BOOGIE WOOGIE"

KING OF

Organ with a Beat!

from STEREO Hi-Fi

VOLUME 2

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SIDE 1

1. NIGHT TRAIN (Fentress, ASCAP) — 2:10
2. PRETTY MELODY (Windy City, ASCAP; Morrison-Troyer-Hubbard) — 2:18
3. MIAMI BEACH RHUMBA (E. B. Marks, ASCAP; Carmichael-Parker-Gomez) — 3:00
4. AUTUMN LEAVES (Andreason, ASCAP; Kosma-Mercer) — 2:13
5. JOHNSON'S BOOGIE WOOGIE (Kandy, BMI; Don Johnson) — 2:00
6. MELODY OF LOVE (Shapiro Bernstein, ASCAP; H. Engelmann) — 2:05

SIDE 2

7. WOODCHOPPERS BALL (Lewis, ASCAP; Goodman-Mandel) — 2:13
8. THE TOUCH OF YOUR LIPS (Jan, ASCAP; Hooper) — 1:50
9. BASIN STREET BLUES (Mayfair, ASCAP; S. Williams) — 2:24
10. ADIOS (Peer International, ASCAP; S. Madrigueras) — 2:17
11. 12TH STREET RAG (Shapiro Bernstein, ASCAP; Bowman) — 1:07
12. PENNSYLVANIA POLKA (Shapiro Bernstein, ASCAP; Lecuona-Manzanares) — 1:50

(Musicians heard with DON JOHNSON, Don Fagan, Trumpet; Ed Stephanie & Don Ball, Bass; Darrell Bellamy & Julius Smallidge, Guitar; Walter Lafay & Mark Johnson, Drums; Engineers Don Lasko & Don Johnson.

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Page 5

Certificate

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United States of America

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Address

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(State of the nature of composition)

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On 12/4/64, Richard introduced Don to the venture's new attorney -- Richard's, Carl-Sr's, and their two machine shops corporations' attorney -- Albert J. Engel, Jr. a/k/a Albert J. Engel who replaced the Landman law firm which had been representing the 4 Johnson buyers and sellers of the Giovanni nightclub #2.[384,752B,752C]

Don invested $10 in Engel's services.

"839 12/4/64 Atty. Engle DJ 10-debit 10-credit".[752-B]

On 12/15/65, Don took full custody/control and really <u>borrowed</u> $8,000 from H.E. Gibson who was not on the 4 Johnsons joint venture because Don had no 11/64 contract with him as he did with the 3 Johnsons who never allowed Don to have full custody/control of their moneys.[752-I]

Don's memo of collateral in the venture to H.E. Gibson was Don's <u>valid</u> 3-years promissory note and not a memo

of collateral in the Johnson family joint venture.

But Don's temporary (until incorporation) 3-years memos of collateral in the venture to the 3 Johnsons were NOT Don's promissory notes to the 3 Johnsons (for want of sole custody/control of their moneys consideration).

On 12/18/64, Richard and Don began the nightclub's joint bank account and represented themselves as owners of the "Musikist" nightclub business. Don contributed the $8,000 that he borrowed from H.E. Gibson[752-I] plus $100. Richard contributed $3,900 remaining from the $6,000 MTBC Escrow **in his custody**.[441] Both signatures were required on checks over $400.[440,752-B,752F]

The joint venture was to incorporate.[495, 524]

The 3 Johnsons defendants secretly-from-Don retained defendant O'Toole law

firm a/k/a Engle & Engel -- including said attorney Engel -- to draft, approve, and 1965-74 store unlawful agreements for disguising themselves as non-joint venturer-moneylenders to Don.

On 12/31/64, Carl-Sr pooled $3,500[449, 450,752B] Don pooled $500 but credited Carl-Sr -- not himself -- on note #4 re Don's 2 children's food & lodging at his 1551 Glenwood, Muskegon home.[752-I]

On 1/1/65, Carl-Sr pooled $3,000.[752J, 752L]

By 1/6/65, all 4 Johnsons were on a joint venture as step #1 of the "bait and switch" confidence game.

Don had been baited into a "better way of life" by way of a joint venture that would perpetuate his hard-won 1956-65 Kandy Tapes & Records Corp. and Kandy Music Publishers.

All 4 Johnson had pooled their monies to purchase the $65,000 nightclub plus

liquor license to cost about $18,000.

And all 4 Johnsons were buyers of the nightclub land, building, and state-owned/controlled liquor license.

On 1/6/65, the step #2 "switch" of the "bait and switch" confidence game began:

Richard's attorney Engel drafted his 1/6 appendix to the 12/22/64 nightclub sales agreement that raised the price of the liquor license to $32,000+ and diguised the 3 Johnson joint venturers as moneylenders to the 4th venturer, Don.[526]

Then Richard's realtor Mark instructed nonlawyer Don to initial Don's approval of defendant attorney Thomas J. O'Toole's similar 1/6/65 appendix to the same nightclub sales agreement that did the same.[530]

Don had never ever seen O'Toole or agreed to pay him $45. But Mark had

Don sign a document that made it look like Don had hired O'Toole to draft the disguise.[540]

Reading from Don's evidence including the Musikist nightclub Ledger: On 1/11/65, Richard and nonlawyer Don opened a Richard or Don savings account #144-104-7 in the Hackley Union National Bank represented by defendant Landman law firm. [448,450, 752-C]

> "HUNB (DONALD E. JOHNSON) + RGJ SAVINGS A #144104-7
> 1/11/65 Chk 7 Acct 05305-9 /s/ DEJ+RGJ $20,000.00-credit. Balance $20,000.00.* * *
> [(7)-104]-1/11 HUNB-(SAVINGS A) $20,000-debit."[752C]

On 2/1 and 2/3/65, Don withdrew $500.00 and $250.00.[752-C]

> "2/1 DEJ $500.00-debit. Balance $19,500.00
> 2/3 DEJ $250.00-debit. Balance $19,250.00."

Between 2/9 and 2/15/65, Joint venturer Richard masquaraded as a moneylender alongside bona fide moneylender Harry E. Gibson via a 2/9/65

Landman firm-drafted **unlawful** Trust Agreement that **lied** that Don -- not Richard and Don -- owned a savings account at the Hackley Union National Bank -- as if Don had borrowed the pooled moneys and had sole control in a sole -- not joint -- Hackley Union National Bank savings account:[476]

On 2/15, Richard mandated that nonlawyer and very busy and trusting Don sign his approval of said Landman firm-drafted document that **lied** that $14,000.00 was transferred from Don's sole savings account.[474, 752-C]

On 2/16/65, Richard **secretly**-from-Don transferred $14,000 of the $20,000 pooled moneys from the Richard **or** Don joint savings account to his and H.E. Gibson's new savings account.[448,450,752-C]

> "HEG-RGJ SAVINGS **B** TRUST #143-650-0* $14,000.00 debit. Balance $5,250.
> [*This withdrawn to MK (Musikist nightclub)-3/22/65]."[752-C]

Thus, Richard and H.E. Gibson secretly

took away from Don his full custody/control of said $8,000 that Don actually did borrow from Gibson. And Gibson had Don's promissory note for $8,000 plus joint custody/control of his $8,000 with Richard.

Richard, with his arm around Carl-Sr, told Don, "we don't want anything to do with your record company".

Don and Carl-Jr then agreed to tranfer Don's Kandy Tapes & Records Corp. (Ind) to Michigan by way of attorney Engel's choice of attorney Charles A. Larnard, Jr.

"123 752-D 2/23/65 C. Larnard, Atty.$5.00-debit."

On 3/19/65 Richard and Gibson -- having coerced Don to sign the 2/9 Trust Agreement -- put the $14,000 into the Musikist nightclub's joint Richard and Don checking account preparatory to closing the nightclub purchase and making Don the sole purchaser via unlawful

documents.[452]

" 3/18 * * * SAV'GS A DEJ-RGJ $5,250-credit-3/22
3/18 * * * SAV'GS B RGJ-HEG-3/22 $14,000.00-credit."[752-D]

On 3/22/65, Richard closed the 11/5/64- 3/22/65 **joint venture** purchase in Richard's name of the Musikist nightclub,[452,540] and replaced Richard's name[415] with Don's name[480] on the 12-15 years land contract.

On 4/15/65, Engel was all 4 Johnsons' attorney. But, secretly from Don, he drafted, approved,[576] and stored away from Don the unlawful 4/15/65 3-pages Trust Agreement between H.E. Gibson (who Carl-Sr bought out in 1969), Richard, and Don.[574-576]

That 4/15/65 Trust Agreement was unlawful because it was based upon Don's invalid 3-years $20,600 promissory note for which Don never recieved a penney in consideration!

[This was the unlawful document used

by Richard and Carl-Sr to 5/20/70 foreclose on Don dba the nightclub after Don invested his all in belief that he was to have a better way of life and there would be a fair incorporation of the venture utilizing his Kandy assets.]

> "The gist of the crime of conspiracy is the unlawful agreement." Roll v People (1955 Colo) 282 P2d 665.

The to-be closed down American Federation of Musicians Local 252 -- where Don was a member -- had been longtime located in the city of Muskegon Heights.

From the Muskegon Heights location of the Giovanni tax-laden nightclubs #1 (and the #2 being purchased,) came a "Donald E. Johnson" (with signature similar to Don's) who was promoted at gatherings at Muskegon's Club 61, Inc. (where Don was then-employed) and elected to the City of Muskegon's board of commissioners. He subsequently became

mayor at a time when Don's stolen assets may have been used, inter alia, as collateral for big bucks being borrowed for a new city hall, etc.

Richard and his family moved into a swanky new home near attorney Engel's similar near-Lake Michigan home constructed by a "Richard H. Johnson" contractor.

In August, 1965, Don invested his $150 with Larnard and Larnard law firm for transfering his Indiana phono records corporation to Michigan with Carl-Jr an officer. The documents were drafted by attorney Larnard's father so as to bring in the promised incorporation of the nightclub.

On September 20, 1965, Kandy Tapes & Records (Ind) was revoked[684] and a Kandy Tapes **And** Records Corp. (Mich) was thereafter established by Michigan Dept. of Treasury over Don's several

objections.

On 11/22/66 at a meeting of all except Carl-Sr, Don was reassured that he was earning fair equity in the venture's incorporation. [1094]

In 5/1-9/1967, defendant Carl A. Johnson, Jr. resigned rather than sign a document $5-correcting the name to Kandy Tapes **&** Records Corp. (Mich-AFM). [542,543]

> "...On this __ day of August, 1967, before me appeared Donald Edgar Johnson to me personally known, who, being by me duly sworn, did say that he is the president of KANDY TAPES & RECORDS CORP. which executed the foregoing instrument * * * CERTIFICATE OF AMENDMENT TO THE ARTICLES OF INCORPORATION * * * The name of the corporation is KANDY TAPES & RECORDS CORP." [542,543]

Don retained AFM-approved/mandated legal ownership of the $40,000 - $1,000,000 Kandy Tapes & Records Corp. assets because **he** never signed away or authorized transfering AFM-approved/mandated legal ownership of Kandy Tapes **&** Records Corp. assets to

anyone else to this day, 1995.

In 1967, Attorney Engel became a Muskegon County Circuit Court judge and defendant attorney Culver replaced Engel as Richard's attorney.

The 3 Johnsons were living high and up to their necks in debt. Don was living low and being unknowingly conned out of everything he owned.

After 1967, Don continued doing the bookkeeping but followed the 3 Johnsons' instruction to hand over accounting chores to their machine shops corporations' accountant with the Republican Party, James Bolthouse.

In 1969, Don's Kandy books, records, corporate seal, invoices etc. were burglarized by Muskegon area tortfeasors from his San Diego-stored mobile office and the Muskegon Heights, Michigan nightclub. Don's unfiled 1994 5th Amended Complaint within this record tells of

details.

In 1970, the 3 Johnsons had invested a mere **$28,658**; refused to fairly incorporate after exhausting Don of **$300,000 - $1,000,000** worth of assets including 5½ years-7 days/100 hours weekly skilled labor against deliberate calculated tripled-plus Muskegon county nightclub competition;[452,480,495,752D] and retained defendant law firms to execute said Engel-drafted 4/15/65 unlawful agreements based upon said $20,600 invalid promissory note in said Charles A. Larnard's Muskegon County Circuit Court -- for taking Don's total invested private properties -- disguised as moneylenders on Don's premises in a state which failed to ensure that Don (not a "Donald E. Johnson" imposter etc.) would be provided just compensation for the substantial portion of his private properties taken for public use.

There was a 6/26/70 default judgment despite Carl-Sr's having taken Don's copy of the 5/20/70-served foreclosure and 5/21/70-accompanied Don to the nearby Green Street courthouse and phoning Judge Larnard for protecting Don's interests, Don's having been given the court secretary Evelyn Wright's plus Judge Larnard's phoned and in person permission, and joint venturer Carl-Sr promising to take care of Don's interests while absolutely exhausted **nonlawyer**-without time or money-Don kept the nightclub open for much-needed business.

> "STATE OF MICHIGAN - CIRCUIT COURT FOR THE COUNTY OF MUSKEGON - #C-4921 - **RICHARD G. JOHNSON, TRUSTEE, Plaintiff** v. DONALD E. JOHNSON, Defendant. * * * IT IS ORDERED AND ADJUDGED that there is due to the plaintiff upon the note and mortgage mentioned and set forth in the complaint, for principal and interest and unpaid real estate taxes, the sum of $35,835.29 ..." "Involved" Judge Larnard's 6/26/70 Default Judgment.[580]

It is a fact that the Constitution mandates just compensation to the owner Don for his private properties taken for

public use despite an event such as the above fraudulently-begotten "default" judgment.

> "A judgment of a state court, even if it be authorized by state statutes, whereby private property is taken for the state or under its direction for public use without compensation made or secured to the owner, is wanting in the due process of law required by the 14th Amendment of the United States Constitution." Chicago B. & O. R. Co. v. Chicago (1897) 41 LEd 979.

On 7/27/70 at a meeting of all 4 Johnsons, Don was unaware that his father Carl-Sr had 1969-secretly purchased Harry E. Gibson's ill-gotten phony $20,600 note/mortgage interest in the venture and Don verbally turned 100% of his $300,000+ equity over to defendant Carl-Sr.

This Is Why Don Has A Valid $500,000+ Claim On The Defendant Carl A. Johnson, Sr. Estate

Carl-Sr then 7/29-7/30/70 directed Don to sign said 100% equity over to a 1970-new Jay Corp. composed of Richard, Carl-Jr, and defendant attorney Culver

who was employed by both the mortgagees Richard and Carl-Sr and the receiver, Carl-Sr.

Don and Carl-Sr were excluded from the venture's incorporation.

On 8/19-12/4/70, Don believed that Carl-Sr took Don's power of attorney #2 for the purpose of winding down the joint venture[484] while Don was mitigating damages in San Diego.[1097]

(Defendant Richard Johnson, president of the venture, may have secretly sought to take the nightclub land and building for himself. He may have succeeded at a scheduled tax sale after 1/12/71).[581]

Having taken over the nightclub, the 3 Johnsons sold it to its chief competitor and head of the Muskegon Heights bartender- waitresses union who had been in a position to spot dishonest people among the 13 waitress and 4 bartenders working at the joint

venture nightclub.

In 1971, Carl-Sr's breach of promise/ fiduciary duty to have Don's special (musical instruments) car repaired in Muskegon caused Don to be away from his teenagers in San Diego 2 weeks past promised deadline causing the loss of custody of his teenagers on public welfare who were flown to their mother, Wanda, who had deserted them 10 years earlier.

In a state whose agents were converting Don's private properties taken for its public's use, the Michigan attorney general Frank Kelley, Democrat, refused to prosecute the confidence game on ground that it would be too expensive.

> "That the wrongdoer gets the property in two steps rather than one where a partnership with his victim is formed should not absolve him of the crime of obtaining money or property by false pretenses where the false pretenses continue to operate up to the moment of his wrongful appropriation of the partnership assets contributed by his victim." People v Jones (1950) 224 P2d 353,357.[52]

In 1973, Don timely sued the 3 Johnsons in a civil contract-conversion-libel & slander suit #73-C7432-CK in Muskegon County Circuit Court in the City of Muskegon.

The judges were said judge Larnard involved with Kandy name conversion and the 3 Johnsons 1970 foreclosing on Don dba the nightclub while disguised as moneylenders; then John H. Piercey whose Muskegon Heights municipal judge office 1964-prepared Don's power of attorney #1 to defendant Richard Johnson (to negotiate terms and nightclub purchase in Richard's name) who was boosted to county circuit judge about the time that said Muskegon Heights' "Donald E. Johnson" was elected into the City of Muskegon's political machine where defendant law firm(s) represented the dominant Muskegon Chronicle's influence upon voters.

In 1973, Don -- already the victim

of the 3 Johnsons' continuing "bait and switch" **confidence game** conspiracy -- was beginning to be the victim of the 3 Johnsons' plus the 6 other defendants' **abuse of the judicial process** additional conspiracy where judges were "bought" by a political action committee funded, in part, by Don's Kandy Tapes & Records Corp./Kandy Music Publishers private properties secretly stolen for public use without any compensation to the rightful owner, Don.

Ex-polish catholic priest-realtor Mark was a likely top conspirator.

About September, 1973 via an unsigned declaration, the AFM began converting Kandy Tapes & Records Corp. to Kandy Tapes And Records Corp.[1100,1101] despite a previous June, 1973 signed AFM declaration to the contrary.[693,694]

> "We cannot confirm your ownership of Kandy Tapes **and** Records Corporation as we have no knowledge of the legal owner ..." 9/5/73 **Unsigned** AFM Letter.[1101]

"Kandy Tapes & Records Corp. is a Signatory to the 1954 and 1959 Phonograph Records Trust Agreements. We do attest to the fact that the Trust Agreements were signed by Donald E. Johnson, President." 9/19/73 **Signed** AFM Letter.[693]

"Kandy Tapes & Records Corp. * * * was incorporated in the State of Indiana on December 14, 1955 * * * revoked by the Secretary of State on September 20, 1965." 10/17/73 **Signed** State Of Indiana Letter.[694]

In 1974, a black representative of the president of the American Federation of Musicians, Robert Crothers, personally visited Don on heels of said 1956 Kandy Tapes & Records Corp. (Ind-AFM) "title booklet/labor agreement" being 1/74-stolen at Grand Rapids' Gillard & Gillard law firm where Don was seeking representation. He declined to provide Don with a requested duplicate or copy of its contents.

(At the 1974 trial, defendant Richard and his realtor Mark denied a pooling of moneys in Richard's custody/control or a joint venture before 12/4/64 when the 3 Johnsons' defendant O'Toole firm

a/k/a Engel & Engel replaced defendant Landman firm as the venture's attorney. This is contrary to Don's hard evidence within the Musikist Ledger herein which was a 1974-82 state trial court exhibit varified by the transcript).[752-A etc]

Contrary to Don's evidence,[484] "bought" county judge Piercey opined "The venture was strictly one of lending money to Don.[695] * * * this never was a joint venture", disallowed completion of the trial, the opening statement was "lost", the closing argument was disallowed, "bought" Judge Piercey walked off the bench, and granted defendant Landman law firm partnership's 3 Johnsons' motion for a 1974 dismissal for no cause of action, etc.

> "You have tried to translate fatherly, motherly, brotherly, concern for your interest into some kind of a joint venture * * * **This was never a joint venture** * * * And as far as I am concerned, you rested * * * You may not have ever used that form -- the words: 'I rest'; but -- * * * You have been saying it for two weeks, and I'm through! **(Whereupon**

the Judge walked off the Bench.)

* * *

"STATE OF MICHIGAN - CIRCUIT COURT FOR COUNTY OF MUSKEGON #73-7432-CK DONALD EDGAR JOHNSON, Plaintiff, v. CARL A. JOHNSON, SR., et al, Defendants. The above entitled action having come on for trial, the plaintiff having presented evidence and rested his case, the defendants having moved for judgment at the end of plaintiff's case, the Court being fully advised in the premises, and conclusion of law, IT IS ORDERED that defendants' motion be and hereby is granted and Judgment of No Cause of Action be entered in favor of the Defendants..." "Bought" County Trial Judge Piercey's Opinion And 12/9/74 Erroneous Judgment That Was Never Approved As To Form By Don.[520] (Emphasis added).

Judge Piercey subsequently revised his pre-12/9/74 3 Johnsons label from "moneylenders" to a ridiculous "moneygivers" to Don rather than admit that they were joint venturers with Don to conform to Don's evidence.

Judge Piercey failed to provide a fair full trial, lost the opening argument, slowed Don's minor testimony and rushed over important events, denied a closing argument, denied a waiver or suspension of transcript cost, denied a timely set of facts for the court of

appeals,[82] and ordered Don to file no more pleadings except to appeal,[82] etc.

The court of appeals #22496 denied the furnishing of a transcript in early 1975.[235]

Defendants' Withholding Don's Trial Court Evidence From Appellate Review

"On 9/4/75, plaintiff filed proof of his being single, broke, living alone, and constantly seeking meaningful employment to qualify for Muskegon public workfare #K6133244A and raise $5,000 transcript cost. Defendants' counsel received a copy as did trial court; **but the Court of Appeals #22496 motion mysteriously disappeared from that court's files per 10/7/81 affidavit**/motion. Also see Fraud Upon The Court #11, related Court of Appeals #108452 re 5/9/89 Supplement p 3-7. Also note that plaintiff's Soc. Sec. #382 14 7430 is erroneously printed 384 14 7430 on T 10/3/74 p 12 in the county where a "Bernie" had been receiving public welfare by using plaintiff's Soc. Sec. number before plaintiff applied for assistance during 1970 for the first time." Pet'n for Certiorari to "Danhof" Mich. App. Ct., S. Ct. #88-2116, p 17.[82]

"...IT IS FURTHER ORDERED that this appeal be, and the same is hereby DISMISSED without prejudice to the filing of an application for delayed appeal pursuant to GCR 806.4 after the full transcripts of the proceedings have been filed **in the trial court**..." 2/5/76 "Danhof" State Court Of Appeals #22496 Order.[80] (Emphasis added).

Between 11/5/76 and 8/29/80, Don was granted leave to proceed in forma pauperis in WD Michigan SD District Court where said Albert J. Engel was a district judge. But Judge W. A. Miles granted 3 Johnsons defendants-Landman firm motion to dismiss Don's attempt to remove the cause where state courts were not providing indigent Don with materials necessary for reasonable access to a timely appeal of right from the 12/9/74 judgment.[v]

On 3/14/78, "Engel's" U.S. Court of Appeals labeled Don's appeal frivolous.[v,300]

On 1/18/79, defendant court of appeals #22496 Chief Judge Robert J. Danhof denied a second application for rehearing of the 8/10/78 denial of disqualification of 3 Johnsons' Landman law firm.[80]

On 11/23/82, the "Danhof" court of appeals' **"0 Judges"** denied jurisdiction

for Don's emergency application for a delayed appeal of right contrary to the court of appeals 2/5/76 order.

> "...IT IS FURTHER ORDERED that this appeal be, and the same is hereby DISMISSED without prejudice to the filing of an application for delayed appeal pursuant to GCR 806.4 after the full transcripts of the proceedings have been filed in the **trial** court ..." 2/5/76 Court of Appeals #22496 Order.

> "[P]laintiff-appellant has filed an emergency application for leave to file a delayed appeal of a judgment entered on December 9, 1974 * * * IT IS ORDERED that the application be, and the same is hereby DENIED for lack of jurisdiction * * * His failure to file an appropriate record in No. 22496 resulted in dismissal of that claim of appeal, without prejudice to filing a delayed appeal pursuant to GCR 1963, 806.4(2) and upon filing full transcripts **with this court**. See order dated February 5, 1976. Plaintiff- appellant's failure to file any transcripts with the Court until October 2, 1979, resulted in an order denying an application for leave to file a delayed appeal dated October 23, 1979." 11/23/82 "**0 Judges**" Fraud On Courts Decision By "Danhof" Court Af Appeals #59895 **Contrary To 2/5/76 #22496 Decision.**[82] (Emphasis added).

Judge Piercey resigned from the bench in April, 1983.

On 5/3/83 when Don hired an assistant attorney and filed an emergency motion for "fraud upon the courts" relief from

the 12/9/74 judgment,[696] Piercey's replacement #1 set a date for a due process-equal protection evidentiary hearing.

But the defendant Landman firm 5/6/83 issued a fraud upon the court that Judge Piercey's replacement #1 had no jurisdiction.[705]

> "We have received our copy of your May 4, 1983 memorandum. A review of your Circuit Court file will reveal that the judgment from which Plaintiff Johnson seeks relief was entered many years ago, and the full appellate process has been exhausted. * * * Accordingly, this Court has no further jurisdiction in the matter and your May 4, 1983 memorandum should be rescinded * * * We are are also attaching a copy of the April 20, 1983 order of the Michigan Supreme Court denying leave to appeal. Very truly yours, UNSIGNED LANDMAN, LUYENDYK, LATIMER, CLINK & ROBB"

Then the Piercey replacement #1 rescinded his scheduled evidentiary hearing of a motion for "fraud upon the courts" relief from the 1974 judgment.[707]

Plaintiff Don objected.[708]

Don was ordered to remove his 1974 trial evidence from the record in 1983,

his motion to disqualify conflicting interests defendant law firms from representing the 3 Johnsons was denied, and his re-motions to Piercey replacement judge #2 for "fraud upon the courts" relief from the 1974 judgment were denied.

On 5/20/83 in state trial court, Don filed an Emergency Request that the Order denying an evidentiary hearing be rescinded.

> "Said Order ... condones 3 men and their agents' taking substantial government property plus a man's total worldwide substantial properties, child custody, and basic Constitutional rights -- under false pretenses! This is a mockery of justice and the Constitution and grounds for appeal to the Supreme Court of the United States if necessary!"

And Don was ordered to stop filing any more papers not in due procedure of filing for an appeal.[224]

And the appellate courts 1/30/84 ordered that an independent action, not a motion, must be filed.[242]

Don's 2/6/84 attempt to file a required independent action for disqualification of Piercey replacement #2 Judge Kobza plus "fraud upon the court" relief from the 1974 judgment[711] was 2/15/84 UNFILED by Judge Kobza.[86]

> "DONALD EDGAR JOHNSON, Plaintiff v. ANTHONY J. MARK, A/K/A TONY MARK, LANDMAN LUYENDIKE LATIMER CLINK & ROBB, A Michigan Partnership, RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR, CARL ALFRED JOHNSON, A/K/A CARL ALFRED JOHNSON, SR., AND EX-MEMBERS OF LAW FIRM ATTORNEYS FRED C. CULVER, JR., WILLIAM P. McNALLY, WILLIAM M. NEWMAN, THOMAS M. BOVEN, WILLIAM T. KERR, Jointly and severally, Defendants. * * * and the 12/9/74 Dismissal be set aside pursuant to GCR 528.3. * * * Assisted by Justian & Veurink ..." 2/6/84 Don's Emergency Complaint For Emergency Injunctive Relief And Damages For Fraudulent Concealment Of A Fraudulent 1965 Concealment Of A US. Agency's Claim Plus Identity Of Persons Liable And Demand For Jury Trial.[711]

> "Felony (criminal) complaints may only be issued by the Prosecuting Attorney. (Not D. Johnson). 2-15-84. /s/ M. Kobza" 2/25/84 Rejection Of 2/6/84 Complaint.

On 2/24/84, Don wrote Michigan Supreme Court #73254:

> "By its denying access 2/6-2/21/84 of plaintiff's independent action, these two (trial court) judges failed to uphold Constitution Amendments 1,5, and 14. And review was declined.[94] * * * Petitioner,

who had petitioned this Court in 1976, 1978, and 1982 for interlocutory decisions, wrote to U.S. Supreme Court 85-357..."[95] 6/23/89 Pet'n For Certiorari 88-2116 To Michigan Supreme Ct 83419+86327, Ct of Appeals 92822+108452, Circuit Ct 73C7432+ 8621207, And Probate Ct 8659607.[40]

"#73-7432-CK: [I]t is the opinion of the Court **said cause was appealed** and the Michigan Supreme Court has denied leave to appeal further, the time for filing any motion for reconsideration long since passed; IT IS HEREBY ORDERED all exhibits in the possession of the Court Records be picked up by the plaintiff, Donald Edgar Johnson, by Friday, July 1, 1983 * * * Felony (criminal) complaints may only be issued by the Prosecuting Attorney. (Not D. Johnson) * * * I will not entertain any evidence * * * We are not taking any testimony * * * You do not have the right to pick your opponent counsel * * * A **delayed appeal was granted by the Court of Appeals.** However, this Court is informed that the transcript was not presented to the Court of Appeals on time, and consequently, they denied further leave after the time for filing the transcript and leave to appeal had past * * * This case ended in 1976..." "Bought" State Trial Judge 1983-86 Replacement #2 M.E. **Kobza's Denying Due Process-Equal Protection** Using **Bald Lies** Dictated By, Among Others, An Ex-Defendant Landman Law Firm's Attorney Allan E. VanderPloeg Within The **County's Attorney** S.C. Corwin's 1986 Law Firm.[85,225,etc.] (Emphasis added).

Between 5/20/84 and 2/4/86, three unfavorable orders were issued in the state court of appeals by "0 Judges".[86]

FEDERAL QUESTIONS WERE RAISED

Defendants' frauds and undue influence have been 1970-95 continuous.

In 1971, Washington, D.C., Don wrote, visited, and verbally raised federal questions to the staff of then-U.S. Attorney John Mitchel.

In 1975-89, Grand Rapids, Michigan and Washington, D.C., Don raised federal questions to the district court and this U.S. Supreme Court by documents seeking a waiver or suspension of appellate fees and costs, an evidentiary hearing for determining that the 1974 dismissal was procured and prolonged by frauds and undue influence upon the courts, removal of state contract action to federal courts, and petitions for writs of certiorari to Michigan appellate courts.

> "WHEN AND HOW QUESTIONS WERE RAISED AND ADJUDICATED IN STATE COURTS. Federal questions were raised at the very onset and throughout the 1983-86 trial court Relief From Judgment action. When State courts denied due process of a motion on ground

that it had to be in the form of an independent action, and when they then blocked the filing of the required independent action in 1984, Petitioner 8/29/85 petitioned this Court #85-357 for interlocutory decisions that resulted in a letter from this Court to the Michigan Court of Appeals that paved the way for the 2-years-delayed 2/10/86 filing of the independent action portion of the 3 years-long Relief From Judgment action in trial court.[66] 6/23/89 Pet'n For Certiorari 88-2116 To Michigan Supreme Ct 83419+86327, Ct of Appeals 92822+108452, Circuit Ct 73C7432+ 8621207, And Probate Ct 8659607.[40]

See detailed **Re FEDERAL QUESTIONS RAISED.**[56a]

In January, 1986, Carl-Sr died leaving a $300,000+ estate equivalent to Don's 1970 minimum equity in the venture including said 5½ years/100 hours weekly labor.

After county trial judge Piercey replacement #2 trial judge Kobza denied access of an independent action for 2 years, he changed his mind and Don was allowed to file his independent action #86-21207-CZ for "fraud upon the courts" relief from the 1974 judgment.

Where Carl-Sr had been represented

1964-86 by the defendant O'Toole partnership a/k/a Engle & Engel, 1973-83 by Landman firm and 1983-86 by the Landman- derivative Culver firm, his estate became represented in 1986 by the 1964-86 O'Toole partnership law firm in circuit court and the 1986-new O'Toole corporate law firm in probate court where Don filed his $500,000+ priority claim against Carl-Sr's estate.

There continued an ongoing post-1974 withholding of due process-equal protection appellate review of Don's 1974-82 county trial court evidence (including "Schultz") that proved Don's private ownership of invested properties, a family joint venture, a failure to form a promised Michigan corporation, a fraudulently-begotten 6/26/70 defasult judgment, the 3 Johnsons' 1964-73 taking -- on the highway and Don's premises in disguise -- Don's near-total private

in disguise -- Don's near-total private properties for private and public use, 1973-89 "frauds upon the courts" that interfered with his parental/civil/ constitutional rights, and damages so as to prevent any compensation to Don.

In 1986, Don's 1973 said contract/motion for "frauds upon the courts" relief action and 1986 independent action for like relief from the 1974 judgment **were combined** and dismissed by "bought" judge Kobza.

Contrary to the state court of appeals' 3/8/88 decision,[253] Don did provide properauthority in support of his request for the trial court to deliver to the court of appeals his 1974 exhibits. It's on file in the record.

The state trial court dismissal of the combined 73-7432-CK plus 86-21207-CZ actions was affirmed in 1989 by "bought" defendant judge Danhof who was both

defendant judge Danhof who was both nonjudicially and judicially involved in perpetuating the 3 Johnsons' unlawful moneylender disguise in this matter.

Where resulted indigent Don's assigned lawyers (state's agents) were incompetent, negligent, or blatant thieves in a state avoiding to pay just compensation to Don, about 8 of Don's in pro per 1976-89 U.S. Supreme Court petitions for certiorari to Michigan appellate courts were declined.

In 1990, Don brought a timely federal question-interfering with civil rights-copyright[184] class action 4th amended complaint -- supported by some of the 1974-82 bank vault-stored preponderance of county trial court original hard evidence -- to District Judge Benjamin F. Gibson for recovery of damages from the defendants' 1964-90 "bait and switch" confidence game-abuse of the judicial

process continuing conspiracies:

> "Congress shall make no law * * * respecting the right of the people * * * to petition the Government for a redress of grievances." Const. Amend. 1.
>
> "No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." Const. Amend. 5.
>
> "All persons born * * * in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without **due process of law**; nor deny any person within its jurisdiction the **equal protection of the laws.**" Const. Amend. 14.
>
> "If two or more persons in any State * * * conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws; * * * If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or

hindering the constituted authorities of any State or Territory from giving or securing to all persons with such State or Territory from giving or securing to all persons with such State or Territory the equal protection of the laws * * * whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators." 42 USCS § 1985(2)(3).

"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 USC § 1331.

"The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to * * * copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in * * * copyright cases." 28 U.S.C. § 1338(a).

"A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third party claim shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it." FRCVP 8(a)(1).

But district judge Gibson denied Don's motion to disqualilfy defendant law firms from continued post-1965 duel

representation of the nightclub sellers and the 3 Johnsons defendants-buyers; then refused to provide a pre-discoveries, pretrial 12/5/90 dispositive "evidentiary" hearing; the nine defendants and/or the judge **"switched"** the defendants' deceptive evidence for victim Don's; the judge abused discretion by considering only the defendants' evidence as if it was plaintiff Don's; and the judge mistakenly granted defendants' motion for res judicata summary disposition of Don's 4th amended complaint while threatening contempt proceedings if Don again sought a **first**-time appellate review-with evidence of the 1974 "no cause of action" judgment central to his 1990 federal case.

Don's evidence was not considered nor was a 5th amended complaint authorized. The judge dismissed Don's

amended complaint but not his federal question-civil rights-copyright case for failure to state a claim or any other reason.

Don's case was not closed!

The judge's pre-discoveries 12/18-filed 12/19/90-entered judgment and opinion were adjudicated on defendants-movants' evidence as if it was plaintiffs-nonmovants'.

Thus, the 12/19/90 dismissal of the amended complaint was procured without due process-equal protection of the judge's even considering plaintiff Don's evidence and by the judge's and/or the defendants' extrinsic fraud upon the courts that the "switched" deceptive defendants' evidence was nonmovants-plaintiffs'.

In the 1991 court of appeals, Culver firm's conspirator-appellee disguised himself as an appellant with a "switched"

joint appendix resembling his deceptive evidence "switched" in district court. And the court of appeals -- without reviewing Don's 725-pages joint appendix containing copies of evidence -- affirmed judge Gibson's 1990 judgment procured by extrinsic fraud and without due process-equal protection for the court of appeals' mistaken "fraud upon the courts" reason that the entire federal question-civil rights-copyright action -- not just the 4th amended complaint -- was dismissed for failure to state a claim.

Even if, arguendo, the court of appeals decision were true, a motion to dismiss for failure to state a claim upon which relief can be granted under FRCVP should not be granted where Don's 725-pages joint appendix of evidence presented to the district judge at the 12/5/90 hearing provided a set of facts

which would entitle Don to relief. Westlake v Lucas.

In 1992, this Supreme Court 91-847 denied certiorari without considering the record that included victim Don's preponderance of evidence never reviewed by other than the 1974 county trial judge Piercey.

When victim Don immediately attempted to file his urgent motion with supplements in district court -- supported by his said 725 pages joint appendix of copies of evidence ignored by the 1991 court of appeals and Supreme Court -- for a post-appeals FRCVP 9(b),60(b)(5)(6) evidentiary hearing in unequitable extraordinary circumstances -- the district judge Gibson **abused discretion** (a) by knowingly denying reasonable access-refusing to even file the motion and supplements, and (b) by issuing a knowingly "fraud upon the courts" ruling

that the entire case was closed -- rather than just the 4th amended complaint was dismissed.

He also denied Don's motion for an injunction baring state courts from dismissing Don's 1986 priority claim against the defendant estate pending this civil rights action.

In the 1992 court of appeals, one of said "bought" judges intervened. He was said Albert J. Engel who, as an attorney, had represented Don and the 3 Johnsons and 1965-drafted, approved, and stored (away from Don) said unlawful diguise documents. Within the 1964-90 confidence game-abuse of the judicial process conspiracies, attorney Engel likely climbed to judgeships on the back of his trusting nonlawyer family joint venturer client, Don.

Judge Engel's private, prior agreement to decide in favor of the defendants

was not a judicial act and proof of the agreement herein could form basis for his sharing this 42 USCS § 1985 action's liability.[523-526,541, 574-576] Rankin v. Howard.

In the 1992 "Engel-influenced" court of appeals, Judge Gibson's 1992 "frauds upon the courts" denials of Rules 9(b),60(b) relief were wrongfully affirmed as if Judge Gibson had not abused discretion and, accordingly, there could be no review of Don's evidence by reviewing the underlying 1990 judgment.

In 1993, the Supreme Court denied (without a review of the conspirators-messed up 1992 court of appeals record) victim Don's petition for an extraordinary writ to the court of appeals.

When Don immediately attempted to file a second urgent post-appeals motion for an FRCVP 9(b),60(b)(5)(6) evidentiary hearing in unequitable extraordinary

circumstances supported by his joint appendix of evidence re-ignored by the court of appeals and the supreme court -- the district judge Gibson for a second time **abused discretion** in 1993 (a) by knowingly denying a meaningful timely evidentiary hearing for determining if the judge himself, the State, the State's judicial branch agents (defendant judge & law firms), and Don's 3 family joint venturers-disguised as moneylenders had furthered an ongoing post-1974 withholding of due process-equal protection appellate review of his 1974-82 county trial court evidence.

On December 19, 1993, a black ex-Muskegon policeman and private investigator claimed that it was he who influenced Don's being repeatedly 1954-64 returned to Muskegon for 4-6- weekers at Club 61 Inc. And he confided that $25,000 for 1964-77 financing of a white

catholic attorney Noel P. Fox to a federal judgeship had come direct from the Muskegon County Treasury, Paul Vitek, Treasurer! This new evidence began to shed light on the post-9/20/65 whereabouts of Don's Kandy Tapes & Records Corp. legal title.

In 1994, the president's office of the American Federation of Musicians issued a letter with copy to said Robert Crothers effecting the demise of Don's valuable Kandy Tapes & Records Corp. (Ind-AFM) and legitimatizing the worthless Michigan Department of Treasury-et al 1965-fabricated Kandy Tapes <u>And</u> Records Corp. (Mich-AFM) which Don never presided over.

> "...The AFM cannot confirm or deny ownership of Kandy Tapes and Record Corporation...". 1100
> <u>11/4/94 Signed AFM Letter</u>.

In 1994 after Don had filed his re-motions for Rule 60(b) post-appeals relief, the black district judge Gibson

issued an injunction that Don could file nonfrivolous pleadings in the so-called "closed" case.

However, after Don 1/26 delivered and 6/14/94 re-delivered his proposed 13-count 5th amended complaint class action supported by said 725-pages joint appendix, Chief Judge Gibson **abused discretion** by affirming his 4/17/92 ruling plus "his" district court's magistrate judge's ruling that all of victim Don's 1994 pleadings were frivolous because the case had been "closed" since December 18, 1990.

During 4 years after his 12/5/90 initial hearing, Judge Gibson could have informed the courts of his mistakes/abuse of discretion/frauds upon the courts; but he didn't.

Judge Gibson was jointly with the defendants responsible for a four years' delay in proceedings. Liljeberg v Health

Servicers Acquisition Corp.

As Don's 1990 district court civil rights etc. case against the defendant estate was pending, the state courts erroneously dismissed Don's priority claim against defendant $300.000+ estate and closed it in early 1994. And the U.S. Supreme Court #94-146, without reviewing the record, declined to issue an extraordinary writ to Michigan Supreme Court #97521.

Between 11/4/94 and 2/9/95, Judge Gibson abused discretion by re-re-refusing to disqualify himself for not being impartial while denying (a) Don's 10/13/94-filed motion for 28 USC §§ 144,455(a),1292(b); FRCVP 9(b), 59(e), 60(b)(5)(6); and Const. Amends. 1,5,14 relief; (b) Don's 11/23/94 motion for stay of proceedings pending appeal; and Don's subsequent motions for certification plus stay of proceedings.

There was "a controlling question of law as to which an immediate appeal might materially advance the ultimate termination of the litigation. 28 U.S.C.A. §§ 455(a), 1292(b)." Lazofsky v Sommerset Bus Co.

On 2/9/95, Don timely amended his 11/15/94 appeal of right from the 11/8/94 decision pursuant to FRAP 4(a).

> "Under FRAP 4(a)(4), if motion is filed pursuant to USCS Rule of Civil Procedure 59(e), new 30 day filing period commences to run once District Court enters order granting or denying motion. Smith v Hudson (1979 CA Tenn) 660 F2d 60, 27 FR Serv. 2d 919, cert denied 444 US 986, 62 LEd2d 415, 100 S Ct 495.

But the "1965-67 'bought' with Don's properties"-U.S. Circuit Judge Engel-influenced 1995 court of appeals denied Don's motion to stay proceedings-void state's 1994 dismissal of Don's claim against defendant estate and 6/27/95 affirmed-covered up Judge Gibson's "fraud upon the courts" 11/8/94 decision by ruling that Judge Gibson did not

abuse discretion and accordingly his underlying 1990 judgment could not be reviewed de novo for providing a first-ever appellate review of Don's preponderance of evidence.

Don's timely petition for rehearing concluded:

> "WHEREFORE, Plaintiff Don requests this court of appeals to adjudicate all of plaintiff's motions thru 6/27/95 and grant oral argument for bringing out the real truths of this matter towards a possible Order similar to the following:
>
> The 11/8/94 district court order is reversed. Hon. Benjamin F. Gibson shall proceed no further herein; another judge shall be assigned forthwith to hear this dispute; Michigan state courts shall stay execution of previous decisions and transmit all 73-C7432-CK, 86-59607-SE, 86-21207-CZ, 9228070-AV, 1974-94 exhibits in their possession to U.S. District Court WD Mich SD case No. 1:90CV-175 forthwith; and plaintiff Don shall be provided an FRCP Rule 9(b),60(b)(5)(6) evidentiary hearing for seeking relief from Judge Gibson's 12/19/90 - 9/27/94 Judgment and orders. See §§ 5,7,11 Injunction of State Proceedings (US) 66 LEd2d 903; 28 USCA §§ 144,455(a), 1651; FRCP 9(b),59(e),60(b)(5)(6),62; U.S. Const. Amends. 1,5,14.
>
> The pro se nonlawyer plaintiff shall be paid a reasonable attorney's fee as part of the costs of his 1990-94 federal appeals where defendants proceeded in bad faith by (a) 1990-92 playing a role in his evidence being 'switched' and ignored during the

> federal district judge's erroneously granting defendants' motion for summary disposition of res judicata and threatening contempt proceedings -- plus appellate courts' erroneously dismissing plaintiff- appellant's action for failure to state a claim, and (b) 1992-94 neglecting and refusing to prevent abuse of the judicial process by that obviously unqualified 1990-94 district court Court Judge. 42 U.S.C.S. § 1988. Marek v Chesny (US) 87 LEd2d 713,738." 7/10/95 Don's Petition For Rehearing, p 20.

And amid omissions from or misstatements in the record, the Engel-influenced court of appeals only tendered victim Don's timely petition for rehearing and then denied due process-equal protection by filing it **after** the mandate was issued and **after** the certified record was returned to district court contrary to regulations. And the court of appeals Circuit Executive staff was silent to Don's copies of subsequent objections to the fraudulently-begotten 8/25/95 denial of Don's petition for rehearing plus timely motion for a stay of mandate pending a writ of certiorari.

THE PRO SE NONLAWYER PARTNER DON WAS DENIED DUE PROCESS-EQUAL PROTECTION IN THE 1995 COURT OF APPEALS (A) WHERE A "BOUGHT" JUDGE ENGEL -- WHO BRIEFLY SAT AT ONSET OF A PREVIOUS PANEL'S DISPOSITIVE HEARING -- HAD AS AN ATTORNEY DRAFTED AND SUPERVISED FINAL DRAFTING OF UNLAWFUL DOCUMENTS THAT THE 3 JOHNSONS DEFENDANT JOINT VENTURERS USED TO GO DISGUISED AS MONEYLENDERS ON THE HIGHWAY AND PARTNER DON'S PREMISES FOR SEVERELY INJURING HIM IN HIS PERSON AND PROPERTY; AND (B) WHERE "FRAUD UPON THE COURTS" DECISIONS COVERED UP THE DISTRICT JUDGE GIBSON'S "FRAUDS UPON THE COURTS" AMID OMISSIONS AND MISSTATEMENTS IN THE RECORD.

During 1995, the Muskegon Savings & Loan -- where Don's Kandy Tapes & Records Corp. was probably also (in addition to Muskegon banks) post-1964 used as collateral by the Muskegon

County/City of Muskegon -- merged with another financial institution and relocated in neighboring Ottawa County, Michigan.

In 1990-94, Grand Rapids, Cincinnati, and Washington, Don raised federal questions to the U.S. district attorney, district court, court of appeals, and this Supreme Court by way of a personal visit, 4th and 5th amended complaints, appeals, and petitions for certiorari/ extraordinary writ considering Don's hard evidence plus 1974-94 no-due process-equal protection decisions procured and prolonged by a chain of longtime continuing frauds and undue influence, inter alia.

CERTIFICATE

I am the Petitioner in pro per herein and hereby certify under penalty of perjury that the foregoing is true and correct. Executed on November 17, 1995.

Donald Edgar Johnson

DONALD EDGAR JOHNSON, In Pro Per

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725 + 376= 1101 Pages Of JOINT APPENDICES HI LITES Of 1973-95 Nonstop Litigation Including Court Of Appeals Cases 91-1160, 92-1829

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"State and federal litigations are intended to be supplemental and cumulative." Amer. Pharmaceutical Ass'n v. U.S. Dept. of Justice, Antitrust Div'n (1971 DC Mich) 344 F Supp 9, affm'd 467 F2d 1290.

"District court has power to change judgment of appellate court where it is no longer equitable that judgment have prospective application." Bailey v Ryan Stevedoring Co. (1978, MD La) 443 F supp 899, 16 BNA FEP Cas 709, 16 CCH EPDS ¶ 8223, 25 FR Serv 2d 512, revd on other grounds (CA 5 La) 613 F2d 588, 22 BNA FEP Cas 445h 881, 24 CCH EPD ¶ 31211 abd cert deb 450 US 964, 67 LEd2d 613, 101 S Ct 1479, 25 BNA FEP Cas 112, 25 CCH EPD ¶ 31589.

"Access to the courts is a 'fundamental constitutional right'." Bounds v Smith (1977 U.S.N.C.) 52 LEd2d 71.

"Rule 60(b)(6) was intended to make available those grounds which equity has long recognized as basis for relief." Bros. Inc. v W.E. Grace Mfg. Co. (1963, CA5 Tex) 320 F2d 594, 138 USPQ 357, 7 FR Serv 2d 1143, later proceeding (ND Tex) 227 F Supp 759, 140 USPQ 324, later proceeding (CA5) 330 F2d 65, 141 USPQ 82, 8 FR Serv 2d 60b.33, Case 2 and revd on other grounds (CA5 Tex) 351 F2d 208, 147 USPQ 1, 9 FR Serv 2d 60b.29, Case 5, cert den 383 US 936, 15 LED2d 852, 86 S Ct 1065, 148 USPQ 772.

An order denying Rule 60(b) relief does not bring up for review the underlying judgment. Browder v. Director, Dep't of Corrections, (1978 U.S.) 434 U.S. 257, 263 n.7.

Fraud on court occurs where court is corrupted or influenced or influence is attempted or where judge has not performed his judicial function, i.e., where impartial functions of court have been directly corrupted. Bulloch v United States (1985 CA10 Utah) 763 F2d 1115, 1 FR Serv 3d 926, later app (CA10 Utah) 768 F2d 1191, cert den (US) 88 LEd2d 901, 106 S Ct 862 and cert den (US) 88 LEd2d 901, 106 S Ct 862. (Emphasis added).

"A federal court has the inherent power to vacate its own judgment upon proof that a fraud has been perpetrated upon the court; this historioc power of equity to set aside fraudulently begotten judgments is necessary to the integrity of the courts; moreover, a federal court has the power to conduct an independent investigation in order to determine whether the court has been the victim of fraud." Chambers v NASCO, INC. (1991 US) 115 LEd2d 27,33.

"A judgment of a state court, even if it be authorized by state statutes, whereby private property is taken for the state or under its direction for public use without compensation made or secured to the owner, is wanting in the due process of law required by the 14th Amendment of the United States Constitution." Chicago B. & Q. R. Co. v. Chicago (1897) 41 LEd 979.

"The prohibition of the 14th Amendment of the Federal Constitution against taking property without due process of law refers to all instrumentalitites of a state, and is therefore violated whenever any person, by virtue of public position under a state government, deprives another of any right protected by that Amendment against deprivation by the state." Id.

"[D]ue process may require that he be accorded a hearing for the sole purpose of providing for an opportunity to clear his name." Codd v Velger (1977 U.S.) 51 LEd2d 92,96[2].

"The acceptance by attorneys of employment by both mortgagee and receivers in mortgage foreclosure action was improper and could not be condoned in equity, notwithstanding that mortgagor knew of such irregularity and made no objection." Crites, Inc. v Prudential Ins. Co. of America (1943 CA6 Oh) 134 F2d 925, cert den 64 S Ct 190, 88 LEd 468, reversed 64 S Ct

1075, 88 LEd 1356.

"Inquiry in cases in which disqualification of attorney sought on ground of previous representation of opposing party is whether attorney **was in position** to acquire confidences of his client; the actual receipt of such confidential information is irrelevant." Dalrymple v Nat. Bank & Trust Co. of Traverse City (1985 DC Mich) 615 F Supp 979,985. (Emphasis added).

"Before the collateral estoppel may be applied to preclude further judicial review of an issue, four basic criteria must be met: * * * (4) the party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding." Detroit Police Officer Ass'n v Young (1987 CA6 Mich) 824 F2d 512,515.

When state officers in exercise or attempted exercise of their official authority, deny to any citizen equal protection of laws or deprive him of his property without due process of law, state itself does so and such official action comes within constitutional prohibitions. Douglas Park Jockey Club v Grainger (1906 CC Ky) 146 F 414, rev on other grounds (CA6 Ky) 148 F 513.

"A prior state court judgment would not preclude the federal courts from acting where the state courts were unable or unwilling to protect federal rights." Fellowship of Christ Church v Thorburn (1985 CA6 Mich) 758 F2d 1140,1144.

"Fraud is 'extrinsic' or 'collateral' within rule authorizing relief from judgment obtained by such fraud when its effect is to prevent an unsuccessful party from having a trial or from fully presenting his case." Fisk v Buder (1942 C.C.A.8) 125 F2d 841; see also inferentially Bucy v Nevada Construction Co. (1942 C.C.A.9)

125 F2d 213.

Where city commenced condemnation proceedings against plaintiff's land about eventually dismissed such proceedings after pendency there for 10 years, plaintiff's complaint stating that city, in causing threat of condemnation to hand over his property over period of 10 years, deprived him of full use and benefit and right to ownership of property, and that such actions of city amounted to taking or damaging of his property without due process of law and in violation of his right under the Fourteenth Amendment, presented a federal question. Foster v Herley (1964 CA Mich) 330 F2d 87, later app (CA6 Mich) 405 F2d 138, 12 FR Serv 2d 372, motion den (CA6 Mich) 423 F2d 660.

"Rule 60(b) recognizes court's inherent power to grant relief from judgment where court has been subjected to fraud and fraud upon court is matter which is so grave that **relief is afforded without regard to any time limitation.**" Great Coastal Express, Inc. v International Brotherhood of Teamsters, etc. (1980 ED Va) 86 FRD 131, 110 BNA LRRM 2052, 29 FR Serv 2d 1181, remanded without op (CA4 Va) 639 F2d 780, later app (CA4 Va) 675 F2d 1349, 110 BNA LRRM 2058, 93 CCH LC ¶ 13447, 33 FR Serv 2d 1234, cert den 459 US 1128, 74 LEd2d 978, 103 S Ct 764, 112 BNA LRRM 2280, 95 CCH LC ¶ 13933. (Emphasis added).

"Equity will set aside a decree in a patent infringement suit." Hazel-Atlas Glass Co. v Hartford-Empire Co. (1944) 322 US 238, 88 LEd 1250, 164 S Ct 997.

"Suitable relief against fraudulent judgments is not of statutory creation, but is a judicially devised remedy fashioned to relieve hardships which from time to time arise from a hard and fast adherence to the court-made rule that

judgments should not be disturbed after the term of their entry has expired." Id.

"A plaintiff must be a 'prevailing party' to recover attorneys' fees under Civil Rights Attorney's Fees Awards Act of 1976 (42 USCS § 1988); plaintiffs may be considered 'prevailing parties' for attorneys' fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit." Hensley v Eckerhard (1983 US) 461 US 424, 76 LEd2d 40,43, 103 S Ct 1933.

"**§ 5. Deficient state court proceeding** * * * [T]he court did state in Montana v United States (1979) 440 US 147, 59 LEd2d 210, 99 S Ct 970; and Allen V McCurry (1980) 449 US 90, 66 LEd2d 308, 101 S Ct 411, that the concept of collateral estoppel cannot apply in a subsequent federal action when the party against whom the earlier decision is asserted did not have a full and fair opportunity to litigate the issue in question in the earlier case. * * *

§ 7. Application where state court judgment is fraudulent or void

The Supreme Court recognized, in the following cases, that a federal court could enjoin, consistent with the prohibition of the predecessor to 28 USCS § 2283, the enforcement of state court judgments which were fraudulently obtained or void for lack of due process.

* * * [T]he court in Simon v Southern R. Co. (1915) 236 US 115, 59 LEd 492, 35 S Ct 255, affirmed a decree of the Court of Appeals affirming a District Court judgment which enjoined the enforcement of the state court judgment. The default judgment in the state court case was void since the defendant had not received notice of the action, the court explained, stating that the plaintiff acquired no rights through the voided default judgment and could be enjoined by a federal court from attempting to enforce

what was a judgment in name, but a nullity in fact. * * *

§ 11. Civil rights laws * * *[T]he Supreme Court held or recognized that the Civil Rights Act of 1871 (42 USCS § 1983) falls within the exception to the prohibition, contained in 28 USCS § 2283, of federal court injunctions of state court proceedings. * * * [O]n remand * * * the court recognized that a civil rights action brought under 42 USCS § 1983 fell within an express statutory exception to 28 USCS § 2283, the court reversing a decision by a **three-judge District Court** in a civil rights **class action** on the ground that the District Court should have abstained, under principles of federalism and comity, from entertaining the action and should have dismissed the complaint." Injunction of State Proceedings 66 LEd2d 903. (Emphasis added).

"A Federal court may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake." In Re Sun Valley Food Co. (1986 CA6 Mich) 801 F2d 186.

"A motion to disqualify counsel is the appropriate remedy for dual representation and the onset of litigation is the proper time for presentation of such motion." Int'l Brotherhood of Teamsters, Etc. v Hoffa (1965 DC DC) 242 F Supp 246.

"Potential, no less than actual, conflict disqualifies counsel from serving in a double capacity." Id.

"Equitable relief will be afforded where the judgment has been procured as result of calculated and premediated conspiracy to defraud." Jungersen v Axel Bros., Inc. (1954 DC NY) 121 F Supp 712, afmd 217 F2d 646, cert den 75 S Ct 784, 349 US 940, 99 LEd 1267, reh den 76 S Ct 99, 350 US 868, 100 LEd 769.

"If there is both a fiduciary lawyer-client relationship on the part of the challeged lawyer himself and a substantial relationship between the two cases, it is the possibility of the breach of confidence, not the fact of the breach, that triggers disqualification of the lawyer * * * the lawyer's firm as well." Kearns v Fred Lavery Porsche Audi Co. (1984 CA Fed) 745 F2d 600,603, cert den 83 LEd2d 971.

"The stockholder's derivative action is an invention of equity to supply the want of an adequate remedy at law to redress breaches of fiduciary duty by corporate managers, who usually also possess the control which enables them to suppress any effort by the corporate entity to remedy such wrongs." Koster v Lumbermens Mutual Cas. Co. (1946 US) 91 LEd 1067,1068.

"Relief from judgment pursuant to Rule 60(b)(6) should have been granted in case arising over dispute between litigants * * * where * * * Court judge had violated 28 USCS § 455(a), which concerns disqualification of federal judges * * * and judge should have known of circumstances which disqualified him, for lack of impartiality, from hearing dispute." Liljeberg v Health Servicers Acquisition Corp. (1988, US) 100 LEd2d 855, 108 S Ct 2194.

"Delay was entirely attributable to judge's inexcusable failure to disqualify himself." Id.

"Pro se complaints are held to less stringent standards than formal pleadings drafted by lawyers, and allegations in pro se complaints must be taken as true and construed in favor of plaintiff." Malone v Colyer (1983 CA6 Tenn) 710 F2d 258.

"Considering policy of liberality behind Rule 15, court which fails to even consider motion to amend, much less grant it, has abused its discretion." Marks v Shell Oil Co (1987 CA6 Mich) 830 F2d 68.

"The right to petition the government for a redress of grievances includes the right of access to the courts; that right is also subject to due process protection in that the opportunity must be at a meaningful time in a meaningful manner. U.S.C.A. Const. Amends. 1,5." Matter of N.C. Trading Cust. & Pat. App. (1978) 586 F2d 221. (Emphasis added).

"The focus of a civil conspiracy claim is the damage, not the conspiracy itself." Mercer v. Jaffe, Snider, Raitt and Heuer, P.C. (1989 WD Mich) 713 F Supp 1019.

"Investor stated cause of action against attorneys, who allegedly participated in preparing and approving * * * for common-law civil conspiracy by alleging that attorneys acted in concert to ensure viability of entities by committing or aiding and abetting * * * fraud." Id.

Merek v Chesny (US) 87 LEd2d 713,738.

"Where defendant had only filed motion to dismiss, which is not responsive pleading, plaintiff still had right to amend his complaint." Miles v Dept. of Army (1989 CA9 CA) 881 F2d 777.

"Federal district courts have **appellate jurisdiction over state courts decisions** which can be collaterally attacked for extrinsic fraud." Moffett v Robbins (1935 DC Kan) 14 F Supp 602, affd (CA10 Kan) 82 F2d 431, cert den 298 US LK675, 80 LEd 1397, 56 S Ct 940. (Emphasis added).

"A fair trial in a fair tribunal is a basic requirement of due process." Re Murchison (1954) 349 US 133, 99 LEd 942, 75 S Ct 623.

"Every procedure which would offer a possible temptation to the average man as a judge not to hold the balance nice, clear, and true between the state and accused denies the latter due process of law." Id.

"A fair trial, as required by due process, requires not only an absence of actual bias on the part of the judge, but also that no man be a judge in his own case or try cases where he has an interest in the outcome." Id.

"[A]ll inmates would have common interest in preventing unconstitutional mail censorship, and civil rights action brought by plaintiff would be maintainable a class action as to question of mail censorship imposed by defendants." Preston v Cowan (1973 DC Ky) 369 F Supp 14, affd in part and vacated in part on other grounds (CA6 Ky) 506 F2d 288.

"The gist of the crime of conspiracy is the unlawful agreement." Roll v People (1955 Colo) 282 P2d 665.

A federal court can enjoin the enforcement of state court judgments fraudulently obtained or void for lack of due process. Simon v Southern R. Co. (1915) 236 US 115, 59 LEd 492, 35 S Ct 255.

"Under FRAP 4(a)(4), if motion is filed pursuant to USCS Rule of Civil Procedure 59(e), new 30-day filing period commences to run once District Court enters order granting or denying motion. Smith v Hudson (1979 CA Tenn) 660 F2d 60, 27 FR Serv. 2d 919, cert denied 444 US 986, 62 LEd2d 415, 100 S Ct 495.(v)

"'**Confidence Game**' is term of art involving taking of money by fraud from victim by means of trick or deception after victim's confidence has first been secured through some false representation or deception." State v Carr 543 P2d 441,443, 112 Ariz 453.

"Allegations of fact in an affidavit of prejudice on the part of a judge are, unless frivolous and fanciful, sufficient to support a motion to disqualify on the ground of prejudice." State of Florida Ex Re. C.A. Brown et al v. Robert T. Dewell, Judge (1938) __Fla.__, 179 So. 695.

"Where motion to dismiss was granted while plaintiff's motion to amend was still pending, dismissal **must be vacated** since trial court's failure to even **consider evidence presented** in motion to amend was abuse of discretion." Thompson v Superior Fireplace Co. (1991 CA6 Tenn) 931 F2d 372. (Emphasis added).

"The difference between sections 144 and 455 is thatsection 455 is self-executing, requiring the judge to disqualify himself for personal bias even in the absence of a party complaint. 'Recusal is mandated . . . only if a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." Trotter v. Intern. Longshoremen's & Warehousemen's Union, 704 F2d 1141, 1144 (9th Cir.1983). Accord United States v. Cowden, 545 F2d 257 (1st Cir.1976), cert. denied, 430 U.S. 909, 97 S.Ct. 1181, 51 LEd2d 585 (1977).

"Assuming substantiality of the federal issues, there is power in federal courts to hear the whole." United Mine Workers v. Gibbs 383 US 715, 16 LEd2d 213, 86 S Ct 1130.

"28 USCS §§ 144,455 give life to due process requirement of fair trial before fair tribunal, and claim of bias and prejudice that survives rigid scrutiny under §§ 144,455 will necessarily pass constitutional muster." United States v International Business Machines Corp. (1979 SD NY) 475 F Supp 1372, 19792 CCH Trade Cases ¶ 62920, affd (CA2) 618 F2d 923, 1980-1 CCH Trade Cases ¶ 63202.

"The legal standard requires the facts to be such as would 'convince a reasonable man that a bias exists'; * * * a bias sufficient to justify recusal must be a personal bias 'as distinguished from a judicial one,' arising 'out of the judge's background and association' and not from the 'judge's view of the law'." United States v Story (1983 CA6 Mich) 716 F2d 1088,1090.

"Summary Judgment is proper when, viewing evidence in light most favorable to nonmovant, there is no genuine issue as to any material fact." Voinche v F.B.I. (1993 CA5 La) 999 F2d 962.

"Summary judgment is reviewed de novo, under the same standards the district court applies to determine whether summary judgment is appropriate." FRCVP 56(c) 28 U.S.C.A. Id.

"Giving preclusive effect to state court judgments is, however, inappropriate 'where the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided by the first court.' Allen v. McCurry, 449 U.S. 90,101, 101 S.Ct.. 411,418, 66 LEd2d 308 (1980); see also Haring v. Prosise, 462 U.S. 306,313, 103 S.Ct. 2368,2373, 76 LEd2d 595 (1983); Fellowship of Christ Church v. Thorburn, 758 F2d at 1144. Vinson v. Campbell County Fiscal Court, 820 F2d 194,197 (6th Cir.1987)." Walker v. Schaeffer (1988 6th Cir.) 854 F2d 138,142. Also see State Judgments-Federal Courts 72 LEd2d 911,921.

The Fifth Amendment's command that private property shall not be taken for public use without just compensation is obligatory on the states. Webb's Fabulous Pharmacies, Inc., et al v Bukwith (1980) 66 LEd2d 938,939.

"A motion to dismiss for failure to state a claim upon which relief can be granted under Federal Rules of Civil Procedure should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. FRCVP 8(a)(2), 12(b)(6)(e)." Westlake v Lucas (1976 CA Mi) 537 F2d 857.

"Standard for determining whether summary judgment is appropriate is whether the **evidence** presents sufficient disagreement to require submission to jury or whether it is so one-sided that one party must prevail as matter of law." Wexley v Michigan State University (1994 CA6 Mich) 25 F3d 1052. (Emphasis added).

"For purpose of summary judgment motion, an issue of fact is 'genuine' if **evidence** is such that reasonable jury could find for the plaintiff." (Emphasis added). Id.

"Abuse of discretion has been defined as 'a definite and firm conviction that the trial court committed a clear error of judgment'." Williams v Browman (1992 CA6) 981 F2d 901,903

"Attorney-client relationship requires an attorney to be alert to potential conflicts and to decline multiple representations when actual conflicts develop. Tenn. Code of Professional Responsibility. DR 5-105(c)." Woodruff v Tomblin (1980 CA6 Tenn) 616 F2d 924,926.

Detailed ARGUMENTS

II. THE DISTRICT JUDGE DID ABUSE DISCRETION, THE NONLAWYER'S 1992-94 POST-APPEALS RULES 9(b), 60(b)(5)(6) PLEADINGS WITH CORRUPTION EVIDENCE FOR RELIEF IN UNEQUITABEL EXTRAORDINARY CIRCUMSTANCES WERE NOT FRIVOLOUS SO THE 12/19/90 JUDGMENT DID DESERVE DE NOVO REVIEW, AND THE FRAUDULENT-NO DUE PROCESS 1970 DEFAULT, 1974 NO CAUSE OF ACTION, 1974-94 STATE APPELLATE AFFIRMATIONS, 1990 RES JUDICATA, AND 1991-92 FEDERAL APPELLATE AFFIRMATIONS DID NOT BAR JUST COMPENSATION.

The 1995 court of appeals erroneously ruled that the district judge did not abuse discretion in denying Rule 60(b) relief and thereby refused to review the underlying 1970-90 judgments on ground of Browder v. Director, Dep't of Corrections.

As shown in Argument IV -- the district judge Gibson did abuse discretion in denying Rule 60(b) relief. Thus, the 1995 court of appeals erred by failing to review the underlying 12/19/90 res judicata summary disposition of the 4th amended complaint de novo. Voinche v F.B.I..

This review de novo would have reviewed Don's longtime withheld **evidence of corruption in the courts** showing that the 1970-94 state and federal "frauds upon the courts" judgments "without due process-equal protection" did not and do not bar U.S. Constitution-mandated just compensation to this nonlawyer conned and wiped out investor in a public nightclub.

Richard's realtor A.J. Mark -- who knew of the pooled moneys (but denied it at the trial) -- $45-used defendant attorney O'Toole to re-draft Richard's attorney Engel's 1/6/65 unlawful agreement disguising Don's joint venture partners as moneylenders not on a joint venture for Don's initials of approval.[81a]

Richard and H. Gibson 2/9/65-used defendant Landman law firm (representing the bank) to draft said 2/9/65 fraud upon the courts document which Richard

mandated that Don sign on 2/15/65.[82a]

Richard, Carl-Sr, and their defendant Landman firm's attorney Culver used Judge Engel's 4/15/65 fraud upon the courts document to foreclose on Don.[85a]

Here are exerpts from the document drafted and witnessed by Now-Judge Engel that was used by joint venturers Richard And Carl-Sr (Carl-Sr bought out H. Gibson in 1969) to foreclose -- disguised by Engel as moneylenders -- on their joint venture partner-Don on 5/20/70 and secretly fraudulently obtain a Default Judgment on 6/26/70.[574-576]

"...15th day of April in the year of our Lord one thousand nine hundred Sixty Five * * * Donald E. Johnson, a single man, 3521 Hoyt Street, Muskegon Heights, Michigan of the first part; and Harry E. Gibson, a married man, Spring Lake, Michigan and Richard G. Johnson, a married man, 487 W. Forest Avenue, Muskegon, Michigan Jointly and to the Survivor of them, Trustees of the second part, Witnessth, That the said party of the first part, for and in consideration of the sum of TWENTY THOUSAND SIX HUNDRED DOLLARS ($20,600.) to him in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, tendered, released, encofed and confirmed,

and by these presents does grant, bargain, sell, remiss, release, encoff and confirm unto the said parties of the second part and to their heirs and assigns FOREVER, All those certain pieces or parcels of Land situated and being in the City of Muskegon Heights, in the County of Muskegon and State of Michigan, and described as follows, to-wit: Parcel 1. * * * Parcel 2. * * * 1965 April 15 PM 4:39 /s/ John G. Hosko REGISTER OF DEEDS * * * Engle & Engel, Attys., 215 Lyman Bldg., Muskegon, Mich. 49440 * * * According to a promissory note bearing even date herewith, executed by said Donald E. Johnson to the said parties of the second part * * * In Witness Whereof, The party of the first part has hereunto set his hand and seal the day and year first above written. Signed, Sealed and Delivered in Presence of /s/ **Albert J. Engel, Jr.** ..."

The 6/26/70 secret-from-Don default judgment was Don's private property taken for the state or under its direction for public use without compensation made or secured to the owner, Don.

That fraudulently-begotten default judgment (where Judge Larnard 5/21/70 lied to Don that joint venturer Carl-Sr could represent Don's interests so as not to cause a default judgment) took Don's private properties for public use without just compensation and is wanting in the due process of law required by the 14th amendment of the U.S. Constitution.

The 12/9/74 "no cause of action" dismissal of Don's attempt for restitution from the secretly-fraudulently-begotten 6/26/70 trial court judgment was defendants' further refusal to comply with the due process of law required by the 14th Amendment of the United States Constitution.

The 1974-89 State appellate affirmations were defendants' even further refusal to comply with the due process of law required by the 14th Amendment of the United States Constitution.

The District Judge Gibson 1990 federal res

judicata summary disposition of Don's 4th amended complaint pretending to consider but **without** considering plaintiff-Don's evidence was further noncompliance with the U.S. Constitution.

The 1991 and 1992 court of appeals affirmations of the district judge's noncompliance was even further non-compliance of the due process of law required by the 14th Amendment of the United States Constitution.

The 1992-94 Judge Gibson denials of relief in post-appeals unequitable extraordinary circumstances was further noncompliance with the due process of law required by the 14th Amendment of the United States Constitution.

The 1995 court of appeals affirmation of the district judge's further noncompliance was even further noncompliance with the due process of law required by the 14th Amendment of

the United States Constitution. Chicago B. & Q. R. Co. v. Chicago. Supra.

III. AT THE ONSET OF THESE PRE-DISCOVERIES PRETRIAL PROCEEDINGS, DEFENDANT STATE AGENT LAW FIRMS SHALL BE DISQUALIFIED FROM FURTHER POST-1964 DUAL REPRESENTATION OF BOTH THE PUBLIC NIGHTCLUB SELLERS AND THE 3 DEFENDANT JOINT VENTURE BUYERS WHO THEY UNLAWFULLY DISGUISED AS MONEYLENDERS WITH A VALID PROMISSORY NOTES/MORTGAGE FROM THE PLAINTIFF 4TH JOINT VENTURE BUYER WHO THEY JOINTLY CONNED AND DEPRIVED OF HIS CHILDREN, PROPERTIES, CAREER, DUE PROCESS, EQUAL PROTECTION, AND JUST COMPENSATION.

In 1964-73, the defendant law firms' parent partnership law firms represented plaintiff Don buyer alongside the 3 Johnson defendants buyers during the 4 Johnsons' never-wound-down 1964-80 joint venture.

They also represented sellers of nightclub. And they accordingly represented both debtors and creditors. And in disguising the 3 Johnsons, they represented both debtor Don and the 3 Johnsons creditors.

In 1964-65, these defendant law firms' parent firms -- including then-attorney and now U.S. 6th Circuit Judge Albert J. Engel -- disguised the 3 Johnsons as "moneylenders with Don's valid $20,600 promissory note" -- as if the 3 Johnsons gave Don full custody/ control of their moneys -- contrary to Don's evidence which has been withheld from appellate review since 1974.

The $20,600 4/15/65 so-called promissory note drafted, approved, and stored away from Don 1965-74 by then-attorney Engel was and is **INVALID** for want of consideration because Don never received the $20,600.

The bank accounts containing all 4 Johnsons' pooled moneys received the $20,600. Those bank accounts were solely controlled by defendant Richard or jointly controlled by Richard and Don.

This is the phony instrument used by the 3 Johnsons and attorney Culver to foreclose on Don on 5/20/70. It is still being withheld from Don to this day by O'Toole partnership's attorney William Hipkiss, et al!

In the 5/20/70 foreclosure on mortgagor- Don dba the nightclub, Landman law firm's attorney Fred C. Culver, Jr. accepted employment from "mortgagees" Richard G. Johnson and Carl A. Johnson, Sr. (for H.E. Gibson who he had secretly bought out in 1969).

Mortgagor Don 7/27/70 provided joint venturer Carl-Sr with Don's total equity for protecting Don's interests while Don would be in California mitigating damages from 7/70 simultaneous theft of his mobile home/office/studio. Thus, Carl-Sr was the "receiver".

And when Carl-Sr 7/29-7/30/70 had Don sign attorney Culver-drafted papers

directing Don's equity not to Carl-Sr himself, but to the Jay Corp., attorney Culver had accepted employment from both the mortgagees (Richard and Carl-Sr) and the receiver (CarlSr). This was improper and not condoned in equity.

> "The acceptance by attorneys of employment by both mortgagee and receivers in mortgage foreclosure action was improper and could not be condoned in equity, notwithstanding that mortgagor knew of such irregularity and made no objection." Crites, Inc. v Prudential Ins. Co. of America (1943 CA6 Oh) 134 F2d 925, cert den 64 S Ct 190, 88 LEd 468, reversed 64 S Ct 1075, 88 LEd 1356.

At the onset of these 1990 proceedings, Don filed a motion to disqualify the law firms from representing the 3 Johnsons defendants buyers and the nightclub sellers.

> "A motion to disqualify counsel is the appropriate remedy for dual representation and the onset of litigation is the proper time for presentation of such motion." Int'l Brotherhood of Teamsters, Etc. v Hoffa (1965 DC DC) 242 F Supp 246.
>
> "Potential, no less than actual, conflict disqualifies counsel from serving in a double capacity." Id.

> "Attorney-client relationship requires an attorney to be alert to potential conflicts and to decline multiple representations when actual conflicts develop. Tenn.Code of Professional Responsibility. DR 5-105(c)." Woodruff v Tomblin (1980 CA6 Tenn) 616 F2d 924,926.

The 1964-83 Landman and derivative 1983 Culver partnership law firms represented defendant Richard and Carl-Jr Johnson in both state circuit and probate courts 1970-90.

In 1986 when defendant Carl-Sr died, the defendant 1983 Culver law firm (derivative of 1964-83 Landman firm) stopped representing him. The defendant O'Toole partnership law firm represented his estate in the state's circuit courts 1986-89 and the 1986-new defendant O'Toole corporate law firm represented his estate in state probate courts 1986-94.

Thus, there is a fiduciary lawyer-client relationship on the part of the law firms. And there is a substantial relationship between this

1990 federal case and the state 1973-94 circuit/probate court cases where plaintiff 1964-73 shared his confidences with the defendant law firms or their parent firms.

> "If there is both a fiduciary lawyer-client relationship on the part of the challeged lawyer himself and a substantial relationship between the two cases, it is the possibility of the breach of confidence, not the fact of the breach, that triggers disqualification of the lawyer * * * the lawyer's firm as well." Kearns v Fred Lavery Porsche Audi Co. (1984 CA Fed) 745 F2d 600,603, cert den 83 LEd2d 971.

> "Inquiry in cases in which disqualification of attorney sought on ground of previous representation of opposing party is whether attorney **was in position** to acquire confidences of his client; the actual receipt of such confidential information is irrelevant." Dalrymple v Nat. Bank & Trust Co. of Traverse City (1985 DC Mich) 615 F Supp 979,985. (Emphasis added).

IV. THE DISTRICT JUDGE'S 1990-94 ERRONEOUS PRE-DISCOVERIES PRETRIAL RES JUDICATA SUMMARY DISPOSITION OF INVESTOR'S 4TH AMENDED CLASS ACTION COMPLAINT AND POST-APPEALS DENIALS OF A FRCVP 9(b),60(b)(5)(6) EVIDENTIARY HEARING OF CORRUPTION IN THE COURTS IN UNEQUITABLE-EXTRAORDINARY CIRCUMSTANCES SHALL BE SET ASIDE FOR ABUSE OF DISCRETION, FRAUDS ON THE COURTS, AND WANT OF DUE PROCESS-EQUAL PROTECTION.

A. THE DISTRICT JUDGE'S 1990 RES JUDICATA SUMMARY DISPOSITION DID NOT COMPLY WITH FEDERAL RES JUDICATA REQUIREMENTS.

The 1990 res judicata summary disposition violated federal res judicata criteria because plaintiff Don had no full and fair opportunity to litigate the joint venture issue in question in his 1973-89 state cases; i.e., the "bought" county judge had 1974 ruled "this never was a joint venture" contrary to Don's 1974 trial's hard evidence **herein** showing, inter alia, that the 3 Johnsons' plus nonlawyer Don's monies were pooled in the 3 Johnsons' custody/control, the nightclub purchase terms were negotiated by one of the 3 Johnsons, and the land/building was purchased in the name of one of the 3 Johnsons -- **not** in Don's name -- and insured by the 3 Johnsons' choice of insurers -- for the venture's first $4\frac{1}{2}$ months before and during the State's agents' (law firms') non-joint

venture-moneylender disguise, inter alia.

> "You have tried to translate fatherly, motherly, brotherly, concern for your interest into some kind of a joint venture * * * **This was never a joint venture** * * * And as far as I am concerned, you rested * * * You may not have ever used that form -- the words: 'I rest'; but -- * * * You have been saying it for two weeks, and I'm through! (Whereupon the Judge walked off the Bench.) * * * The above entitled action having come on for trial, the plaintiff having presented evidence and rested his case, the defendants having moved for judgment at the end of plaintiff's case, the Court being fully advised in the premises, and conclusion of law, IT IS ORDERED that defendants' motion be and hereby is granted and Judgment of No Cause of Action be entered in favor of the Defendants..." "Bought" County Trial Judge Piercey's Opinion And 12/9/74 Erroneous Judgment That Was Never Approved As To Form By Don. (Emphasis added).

The defendant Landman law firm had represented Don plus the 3 Johnsons buyers, the land/building sellers, the nightclub's 1964-67 bank, the newsmedia, and defendant Richard Johnson's corporation(s) during the venture.

The state courts failed to disqualify that firm from 1973-83 representing the 3 Johnsons against Don in Don's action

against his partners.

Defendant Richard and his realtor A.J. Mark were able to commit purjury contrary to Don's evidence. (Richard denied having sole or joint control of pooled moneys before 2/16/65[752C] contrary to evidence showing he had sole control 9/25-12/18/64 and joint control 12/18/64-2/16/65).[752A-L]

The resulted indigent Don was 1974-83 deprived of a deserved waiver or suspension of his "fresh-off-welfare" piecemeal-filed $5,000 transcript cost plus a first-ever appeal of right with evidence of said 1974 dismissal for no cause of action against the 3 Johnsons defendants.

> "On 9/4/75, plaintiff filed proof of his being single, broke, living alone, and constantly seeking meaningful employment to qualify for Muskegon public workfare #K6133244A and raise $5,000 transcript cost. Defendants' counsel received a copy as did trial court; **but the Court of Appeals #22496 motion mysteriously disappeared from that court's files per 10/7/81 affidavit**/motion. Also see Fraud Upon The Court #11, related

Court of Appeals #108452 re 5/9/89 Supplement p 3-7. Also note that plaintiff's Soc. Sec. #382 14 7430 is erroneously printed 384 14 7430 on T 10/3/74 p 12 in the county where a "Bernie" had been receiving public welfare by using plaintiff's Soc. Sec. number before plaintiff applied for assistance during 1970 for the first time." Pet'n for Certiorari to "Danhof" Mich. App. Ct., S. Ct. #88-2116, p 17.[82]

"...IT IS FURTHER ORDERED that this appeal be, and the same is hereby DISMISSED without prejudice to the filing of an application for delayed appeal pursuant to GCR 806.4 after the full transcripts of the proceedings have been filed **in the trial court**..." 2/5/76 "Danhof" State Court Of Appeals Order.[80] (Emphasis added).

"[P]laintiff-appellant has filed an emergency application for leave to file a delayed appeal of a judgment entered on December 9, 1974 * * * IT IS ORDERED that the application be, and the same is hereby DENIED for lack of jurisdiction * * * His failure to file an appropriate record in No. 22496 resulted in dismissal of that claim of appeal, without prejudice to filing a delayed appeal pursuant to GCR 1963, 806.4(2) and upon filing full transcripts **with this court**. See order dated February 5, 1976. Plaintiff-appellant's failure to file any transcripts with the Court until October 2, 1979, resulted in an order denying an application for leave to file a delayed appeal dated October 23, 1979." 11/23/82 **"0 Judges"** Fraud On Courts Decision By "Danhof" Court Af Appeals **Contrary To 2/5/76 Decision.**[82] (Emphasis added).

"#73-7432-CK: [I]t is the opinion of the Court **said cause was appealed** and the Michigan Supreme Court has denied leave to appeal further, the time for filing any motion for reconsideration long since passed; IT IS HEREBY ORDERED all exhibits in the possession of the Court Records be picked up by the plaintiff, Donald Edgar Johnson, by Friday, July 1, 1983 * * * Felony (criminal) complaints may only be issued by the Prosecuting Attorney. (Not D. Johnson) * * * I will not entertain any evidence * * * We are not taking any testimony * * * You do not have the right to pick your opponent counsel * * * A **delayed appeal was granted by the Court of Appeals.** However, this Court is informed that the transcript was not presented to the Court of Appeals on time, and consequently, they denied further leave after the time for filing the transcript and leave to appeal had past * * * This case ended in 1976..." "Bought" State Trial Judge 1983-86 Replacement #2 M.E. **Kobza's Denying Due Process-Equal Protection** Using **Bald Lies** Dictated By, Among Others, An Ex-Defendant Landman Law Firm's Attorney Allan E. VanderPloeg Within The **County's Attorney** S.C. Corwin's 1986 Law Firm. 85,225,etc.

(Emphasis added).

In 1965, to-be U.S. 6th Circuit Judge Albert J. Engel of the defendant O'Toole partnership drafted his own 1/6/65 appendix to the 12/22/64 nightclub sales agreement and thereafter approved and stored the attorney O'Toole-drafted 1/6/65 unlawful replacement appendix disguising

the 3 Johnsons as non-joint venturer moneylenders to Don.

The judge Engel-influenced WD Mich SD district court disallowed removal and the U.S. Supreme Court declined to review any of Don's several 1975-88 interlocutory petitions for a writ of certiorari.

Thus, Don -- against whom a 1974 decision is asserted -- did not have a full and fair opportunity to 1973-89 litigate the joint venture issue which was unfavorably decided by the county circuit court 1974 decision and was 1974-89 deprived of an appeal of right with evidence.

Accordingly, four basic criteria were not met, Don did not have a full and fair opportunity to litigate the issue, the state courts were unable or unwilling to protect federal rights, and the state court judgments did not

have a preclusive effect to prevent further federal review.

> "Giving preclusive effect to state court judgments is, however, inappropriate 'where the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided by the first court.' Allen v. McCurry, 449 U.S. 90,101, 101 S.Ct.. 411,418, 66 LEd2d 308 (1980); see also Haring v. Prosise, 462 U.S. 306,313, 103 S.Ct. 2368,2373, 76 LEd2d 595 (1983); Fellowship of Christ Church v. Thorburn, 758 F2d at 1144. Vinson v. Campbell County Fiscal Court, 820 F2d 194,197 (6th Cir.1987)." Walker v. Schaeffer (1988 6th Cir.) 854 F2d 138,142. Also see State Judgments-Federal Courts 72 LEd2d 911,921.

> "Before the collateral estoppel may be applied to preclude further judicial review of an issue, four basic criteria must be met: * * * (4) the party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding." Detroit Police Officer Ass'n v Young (1987 CA6 Mich) 824 F2d 512,515.

> "A prior state court judgment would not preclude the federal courts from acting where the state courts were unable or unwilling to protect federal rights." Fellowship of Christ Church v Thorburn (1985 CA6 Mich) 758 F2d 1140,1144.

Moreover, there were issues untouched in the State courts. Don's evidence proved Don's private ownership of invested

properties, a family joint venture, a failure to form a promised Michigan corporation utilizing Don's corporate assets, the 3 Johnsons' 1964-73 taking -- on the highway and Don's premises in disguise -- Don's near-total private properties for private and public use, and 1970-94 "frauds upon the courts" that interfered with his parental/civil/constitutional rights so as to prevent any compensation to Don.

B. THE DISTRICT JUDGE'S 1990-94 JUDGMENT AND ORDERS ABUSED DISCRETION IN THE FOLLOWING WAYS:

"Abuse of discretion has been defined as 'a definite and firm conviction that the trial court committed a clear error of judgment'." Williams v Browman (1992 CA6) 981 F2d 901,903

1. By 1990 Granting Defendants-Movants' Motion For Res Judicata Summary Disposition Of The 4th Amended Complaint And Threatening Contempt Proceedings While Plaintiffs' Motion To Amend Was Still Pending And Without ConsideringPlaintiffs-Nonmovants' Evidence.

"Where defendant had only filed motion to dismiss, which is not responsive pleading, plaintiff still had right to amend his complaint." Miles v Dept. of Army (1989 CA9 CA) 881 F2d 777.

"Where motion to dismiss was granted while plaintiff's motion to amend was still pending, dismissal **must be vacated** since trial court's failure to even **consider evidence presented** in motion to amend was abuse of discretion." Thompson v Superior Fireplace Co. (1991 CA6 Tenn) 931 F2d 372. (Emphasis added).

"Summary Judgment is proper when, viewing evidence in light most favorable to nonmovant, there is no genuine issue as to any material fact." Voinche v F.B.I., supra.

"Summary judgment is reviewed de novo, under the same standards the district court applies to determine whether summary judgment is appropriate. FRCVP 56(c) 28 U.S.C.A." Id.

2. By thereafter Knowingly Denying Nonmovants' Reasonable Access And A Post-Appeals Rules 9(b),60(b)(5)(6) Evidentiary Hearing In Unequitable Extraordinary Circumstances.

An evidentiary hearing would have determined that the State and its agents failed to provide just compensation for Don's private properties taken for public use and the defendant State, its judicial branch agents, and the 3 joint venturers

"disguised- by-the judicial branch agents as moneylenders" **plus the district judge himself** -- furthered a 1974-94 20-years continuing conspiracy to withhold pro se nonlawyer partner's state trial court preponderance of evidence from appellate review.

That evidence proves partner Don contributed $300,000 - $1,000,000 compared to 3 Johnsons' mere $22,659 and Don's 1974-89 Contract - Conversion - Libel & Slander-"FraudUpon The Courts" - "Fraud Upon The Courts" Estate Claim **three 1973-94 actions** against his 3 joint venturer partners.

His partners -- in disguise on the highway and Don's premises -- severely injured Don's person and property.

Discoveries would have been made, a trial on the merits would have been provided, defendants would have had to account for their tortuous conduct, and

Don would have been awarded substantial damages. Const. Amends. 1,5,14; 42 USC § 1985(2)(3); FRCVP 9(b), 60(b)(5)(6).

> "The right to petition the government for a redress of grievances includes the right of access to the courts; that right is also subject to due process protection in that the opportunity must be at a meaningful time in a meaningful manner. U.S.C.A. Const. Amends. 1,5." Matter of N.C. Trading Cust. & Pat. App. (1978) 586 F2d 221. (Emphasis added).
>
> "Access to the courts is a 'fundamental constitutional right'." Bounds v Smith (1977 U.S.N.C.) 52 LEd2d 71.
>
> "A court of equity may grant relief against a judgment because of after-discovered fraud." Hazel-Atlas Glass Co. v Hartford-Empire Co., supra.
>
> "Suitable relief against fraudulent judgments is not of statutory creation, but is a judicially devised remedy fashioned to relieve hardships which from time to time arise from a hard and fast adherence to the courtg-made rule that judgments should not be disturbed after the term of their entry has expired." Id.
>
> "Equity will set aside a decree in a patent infringement suit." Id.
>
> "Pro se complaints are held to less stringent standards than formal pleadings drafted by lawyers, and allegations in pro se complaints must be taken as true and construed in favor of plaintiff." Malone v. Colyer, infra.

3. By Thereafter 6/14/94 Receiving But Not Filing Don's 5th Amended Complaint.

"Where defendant had only filed motion to dismiss, which is not responsive pleading, plaintiff still had right to amend his complaint." Miles v Dept. of Army, supra.

"Considering policy of liberality behind Rule 15, court which fails to even consider motion to amend, much less grant it, has abused its discretion." Marks v Shell Oil Co (1987 CA6 Mich) 830 F2d 68.

4. By Issuing A "Fraud Upon The Courts" Ruling That Don's Rules 9(b),60(b)(5)(6) Motion Was A Rule 60(b)(1) Motion Over 1 Year Too Late.

Don's post-appeals 3/92-10/94 motions were for Rules 9(b),60(b)(5)(6) relief with no time limit and were never for Rule 60(b)(1) relief (with a 1 year time limit).

This fact is contrary to Judge Gibson's order:

"To the extent that plaintiff may seek to construe this as a Rule 60(b) motion challenging the court's December 18, 1990 judgment, it is untimely. Such motions when predicated on 'fraud (whether heretofore denominated intrinsic or extrinsic) misrepresentation, or other misconduct of an adverse party,' must be made within one year. Rule 60(b), FRCP. * * * /s/ Benjamin

F. Gibson, Chief Judge". District Judge's 4/17/92 Order.

"'**Mistakes, Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (5) ... it is **no longer equitable** that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The **motion** shall be made **within a reasonable time** * * * This rule **does not limit the power of a court to** * * * **set aside a judgment for fraud upon the court.** * * * the procedure for obtaining any relief from a judgment shall be **by motion** as prescribed in these rules or by an independent action.' Fed.Rul.Civ.Proc. 60(b)." FRCVP 60(b)(5)(6) **With No Time Limit.** (Emphasis added).

"**Mistakes, Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect..." FRCVP 60(b)(1) With 1 Year Time Limit.

There was no time limitation for Don's seeking relief from the 1990 judgment despite 1991 and 1992 appellate affirmations where the 1990-94 federal courts had been subjected to the district

judge's and defendants' extrinsic frauds upon the courts.

> **Fraud on court** occurs where court is corrupted or influenced or influence is attempted or where judge has not performed his judicial function, i.e., where impartial functions of court have been directly corrupted. Bulloch v United States (1985 CA10 Utah) 763 F2d 1115, 1 FR Serv 3d 926, later app (CA10 Utah) 768 F2d 1191, cert den (US) 88 LEd2d 901, 106 S Ct 862 and cert den (US) 88 LEd2d 901, 106 S Ct 862. (Emphasis added).

> "Rule 60(b) recognizes court's inherent power to grant relief from judgment where court has been subjected to fraud and fraud upon court is matter which is so grave that **relief is afforded without regard to any time limitation.**" Great Coastal Express, Inc. v International Brotherhood of Teamsters, etc. (1980 ED Va) 86 FRD 131, 110 BNA LRRM 2052, 29 FR Serv 2d 1181, remanded without op (CA4 Va) 639 F2d 780, later app (CA4 Va) 675 F2d 1349, 110 BNA LRRM 2058, 93 CCH LC ¶ 13447, 33 FR Serv 2d 1234, cert den 459 US 1128, 74 LEd2d 978, 103 S Ct 764, 112 BNA LRRM 2280, 95 CCH LC ¶ 13933. (Emphasis added).

5. By Attempting To Issue A Decree Dismissing Don's Infringement Of Copyrighted Sounds/Songs/Arrangements Action.

Since 1992 and despite his 1994 allowing nonfrivolous pleadings to be filed, the district judge has attempted to dismiss Don's copyright infringement

action by labeling this case "closed".

> "ORDER REJECTING PLEADING * * * REASON: A final judgment has been entered dismissing this action and the case is no longer pending in this or any other federal court. * * * /s/ Benjamin F. Gibson, Chief Judge." Chief District Judge's 5/7/92 Order.

> "Equity will set aside a decree in a patent infringement suit." Hazel-Atlas Glass Co. v Hartford-Empire Co., supra.

> "Suitable relief against fraudulent judgments is not of statutory creation, but is a judicially devised remedy fashioned to relieve hardships which from time to time arise from a hard and fast adherence to the court-made rule that judgments should not be disturbed after the term of their entry has expired." Id.

6. By Labeling Don's Motions For FRCVP 9(b),60(5)(6) Relief As Frivolous And Failing To Grant Them.

The case was not closed where the action was not dismissed; (b) Don's evidence shows that the 1990 judgment was unequitable where he contributed **$300,000 - $1,000,000** while the 3 Johnsons contributed a mere **$22,658** to the never-wound-down 4-Johnsons joint venture.

The district judge could have and should have changed the judgment of appellate courts that affirmed the judge's erroneous and unequitable 12/19/90 judgment.

> "District court has power to change judgment of appellate court where it is no longer equitable that judgment have prospective application." Bailey v Ryan Stevedoring Co. (1978, MD La) 443 F supp 899, 16 BNA FEP Cas 709, 16 CCH EPDS ¶ 8223, 25 FR Serv 2d 512, revd on other grounds (CA 5 La) 613 F2d 588, 22 BNA FEP Cas 445h 881, 24 CCH EPD ¶ 31211 abd cert deb 450 US 964, 67 LEd2d 613, 101 S Ct 1479, 25 BNA FEP Cas 112, 25 CCH EPD ¶ 31589.
>
> "Rule 60(b)(6) was intended to make available those grounds which equity has long recognized as basis for relief." Bros. Inc. v W.E. Grace Mfg. Co. (1963, CA5 Tex) 320 F2d 594, 138 USPQ 357, 7 FR Serv 2d 1143, later proceeding (ND Tex) 227 F Supp 759, 140 USPQ 324, later proceeding (CA5) 330 F2d 65, 141 USPQ 82, 8 FR Serv 2d 60b.33, Case 2 and revd on other grounds (CA5 Tex) 351 F2d 208, 147 USPQ 1, 9 FR Serv 2d 60b.29, Case 5, cert den 383 US 936, 15 LED2d 852, 86 S Ct 1065, 148 USPQ 772.
>
> "A federal court has the inherent power to vacate its own judgment upon proof that a fraud has been perpetrated upon the court; this historioc power of equity to set aside fraudulently begotten judgments is necessary to the integrity of the courts; moreover, a federal court has the power to conduct an independent investigation in order to determine whether the court has been the

victim of fraud." Chambers v NASCO, INC. (1991 US) 115 LEd2d 27,33.

7. By Threatening Contempt Proceedings (a) If Don Attempted To Further Seek Appellate Review Of The 1974 Dismissal, And (b) If Don Continued To File Motions For Rules 9(b),60(b) Relief From The District Judge's 1990 Judgment.

Don has alleged that the 1974 dismissal for no cause of action was procured and prolonged through fraud, deception, and mistake.

The district judge could have and should have entertained a collateral attack on it.

> A Federal court "may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake." In Re Sun Valley Food Co. (1986 CA6 Mich) 801 F2d 186.

The district judge had appellate jurisdiction over the 1974 state court decision which can be attacked for extrinsic fraud.

"Fraud is 'extrinsic' or 'collateral' within rule authorizing relief from judgment obtained by such fraud when its effect is to prevent an unsuccessful party from having a trial or from fully presenting his case." Fisk v Buder (1942 CCA8) 125 F2d 841; see also inferentially Bucy v Nevada Construction Co. (1942 CCA9) 125 F2d 213.

"Federal district courts have **appellate jurisdiction over state courts decisions** which can be collaterally attacked for extrinsic fraud." Moffett v Robbins (1935 DC Kan) 14 F Supp 602, affd (CA10 Kan) 82 F2d 431, cert den 298 US LK675, 80 LEd 1397, 56 S Ct 940. (Emphasis added).

Plaintiff Don should not have been threatened by the district judge with contempt proceedings if he continued to file such pleadings because it was tantamount to the judge's impeding, hindering, obstructing, and defeating the due course of justice with intent to deny to Don the equal protection of the laws, to injure Don or his property for lawfully enforcing, or attempting to enforce Don's right to the equal protection of the laws. 42 U.S.C.S. § 1985(2)(3); Const. Amends. 1,5,14.

"Pro se complaints are held to less stringent standards than formal pleadings drafted by lawyers, and allegations in pro se complaints must be taken as true and construed in favor of plaintiff." Malone v Colyer (1983 CA6 Tenn) 710 F2d 258.

C. THE DISTRICT JUDGE'S 1990-94 SUMMARY DISPOSITION AND SUBSEQUENT ORDERS WERE PROCURED AND PROLONGED BY FRAUDS UPON THE COURTS.

1. The Judge Issed "Frauds Upon The Court" Reasons For Denying Rules 59(e),60(b) And 28 USC §§ 144,455, 1292(b) Relief.

2. It Was A Fraud Upon The Courts Where The District Judge Issued His 1990 Judgment Based On His Opinion That He First Considered Plaintiffs- Nonmovants' Evidence Before Granting Movants' Motion For Res Judicata Summary Disposition Of The 4th Amended Complaint.

3. It Was A Fraud Upon The Courts That Don's Rules 9(b), 60(b)(5)(6) Motion Was A Rule 60(b)(1) Motion And Over 1 Year Too Late.

4. It Was A Fraud Upon The Courts That The Entire Federal Question-Civil Rights-Copyright Case Had Been Closed -- Not Just The 4th Amended Complaint Dismissed -- By The District Judge's Summary Disposition Of The 4th Amended Complaint.

a. The District Judge's 12/19/90 Res Judicata Summary Disposition Dismissed The Complaint But Not The Action.

The district judge issued many frauds upon the courts that his 1990 judgment closed the case; i.e., dismissed the entire federal question-interfering with civil rights-copyright infringement action.

The defendants did not move to dismiss the action; rather, they moved to dismiss only the 4th amended complaint on the ground of res judicata summary disposition.

Nowhere in the Judge Gibson 12/19/90-entered opinion and judgment is there dismissal of the action; rather, there is res judicata summary disposition of just the 4th amended complaint.

> "...[T]he defendants' motions to dismiss are GRANTED and the plaintiff's **complaint** is DISMISSED with prejudice." District Judge's 12/19/90-Entered Judgment. (Emphasis added).

b. The 12/18/90-Filed Judgment Is Properly Referred To As The 12/19/90 Judgment.

The judge erroneously kept refering to his 12/19/90 judgment as his 12/18/90 judgment.

> "A judgment is effective only when so set forth and when entered as provided in Rule 79(a)." FRCVP 58.
>
> "The entry of an order or judgment shall show the date the entry is made." FRCVP 79(a).

c. The Complaint's Dismissal Was Procured By The Judge's Extrinsic Fraud Upon The Courts That Defendants-Movants' Evidence Was Plaintiffs-Nonmovants.

The judge granted defendants' motion for res judicata summary disposition without considering nonmovant-Don's evidence because it had been "switched" by the judge and/or the defendants between the onset of the 12/5/90 dispositive hearing -- when Don was cut off from referring to his evidence brought to the hearing -- and the 12/19/90 judgment which was and is a "fraud upon the courts"

because it lies that movants-defendants' evidence was nonmovant-plaintiffs'.

When Judge Gibson and/or the defendants "switched" defendants' evidence with plaintiffs, there was an extrinsic fraud upon the court. Fisk v Buder, supra.

> "Equitable relief will be afforded where the judgment has been procured as result of calculated and premediated conspiracy to defraud." Jungersen v Axel Bros., Inc. (1954 DC NY) 121 F Supp 712, afmd 217 F2d 646, cert den 75 S Ct 784, 349 US 940, 99 LEd 1267, reh den 76 S Ct 99, 350 US 868, 100 LEd 769.
>
> "Summary Judgment is proper when, viewing evidence in light most favorable to nonmovant, there is no genuine issue as to any material fact." Voinche v F.B.I., supra.
>
> "Summary judgment is reviewed de novo, under the same standards the district court applies to determine whether summary judgment is appropriate." Id,
>
> "Standard for determining whether summary judgment is approprioate is whether the evidence presents sufficient disagreement to require submission to jury or whether it is so one-sided that one party must prevail as matter of law." Wexley v Michigan State University (1994 CA6 Mich) 25 F3d 1052. (Emphasis added).

"For purpose of summary judgment motion, an issue of fact is 'genuine' if **evidence** is such that reasonable jury could find for the plaintiff." (Emphasis added). Id.

5. It Was A Fraud Upon The Courts That Nonmovant - Plaintiff's Pleadings Were Frivolous And Not Worthy Of Certification For Interlocutory Appeal.

Malone, supra.

D. THE DISTRICT JUDGE'S DECISIONS WERE PROCURED BY UNDUE INFLUENCE.

By joining defendants' withholding of Don's evidence from a first-ever appellate review in violation of the Constitution and laws, the judge followed instructions from his influential mentors who took Don's assets without providing any just compensation.

E. THE DISTRICT JUDGE'S ERRONEOUS RES JUDICATA SUMMARY DISPOSITION WAS PROCURED AND PROLONGED WITHOUT DUE PROCESS-EQUAL PROTECTION.

The 4th amended complaint's dismissal was adjudicated by the judge's considering defendants-movants' evidence as if it was plaintiffs-nonmovants.

The complaint's dismissal was thus procured without due process-equal protection by the judge's issuing the fraud upon the courts that defendants' 80-orders dossier of evidence was plaintiffs' in its opinion footnotes.

> "[1] The dossier contains eighty orders that have been issued by seven different courts..." Judge Gibson's 12/18/90 Opinion Entered On 12/19/90.

The res judicata summary disposition was based upon the Opinion.

> "...In accordance with the Opinion dated December 18, 1990, IT IS HEREBY ORDERED ..." Judge Gibson's 12/19/90- Entered Judgment.

Accordingly, Don and members of his class were not provided due process-equal protection of having their evidence even considered.

F. THE 12/19/90 JUDGMENT MUST BE VACATED!

> "Where motion to dismiss was granted while plaintiff's motion to amend was still pending, dismissal **must be vacated** since trial court's failure to even **consider evidence presented** in motion to amend was **abuse of discretion.**" Thompson v Superior Fireplace Co. (1991 CA6 Tenn) 931 F2d 372.

(Emphasis added).

"A motion to dismiss for failure to state a claim upon which relief can be granted under Federal Rules of Civil Procedure should not be granted **unless** it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. FRCVP 8(a)(2), 12(b)(6)(e)." Westlake v Lucas (1976 CA Mi) 537 F2d 857. (Emphasis added).

Const. Amends. 1,5,14.

Matter of N.C. Trading, supra.

V. A NEW DISTRICT JUDGE AND A FIRST-EVER APPELLATE REVIEW OF THE COUNTY'S 1974 "NO CAUSE OF ACTION" DISMISSAL SHALL BE EXPEDITIOUSLY PROVIDED FOR THE PUBLIC PHONO RECORDS-MUSIC PUBLISHING-NIGHTCLUB INVESTOR'S 1990 FEDERAL QUESTION-INTERFERING WITH CIVIL RIGHTS-COPYRIGHT ONGOING ACTION.

A. A NEW DISTRICT JUDGE SHALL BE EXPEDITIOUSLY PROVIDED.

1. Don Provided A Fair And Adequate Set Of Facts That Would Convince A Reasonable Man That A Personal Bias Exists Arising Out Of The Present Judge's Background And Association.

"§ **144 Bias or prejudice of judge** Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such

proceeding.

> The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term [session] at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith." 28 USCS § 144.

> "The legal standard requires the facts to be such as would 'convince a reasonable man that a bias exists'; * * * a bias sufficient to justify recusal must be a personal bias 'as distinguished from a judicial one,' arising 'out of the judge's background and association' and not from the 'judge's view of the law'." United States v Story (1983 CA6 Mich) 716 F2d 1088,1090.

Don's required affidavit for § 144 relief shows a well-grounded fear that Don will not receive a fair trial at the hands of Judge Gibson.

> "The test of the sufficiency of an affidavit disqualifying a judge is whether or not its content shows that the party making it has a well-grounded fear that he will not receive a fair trial at the hands of the judge." State of Florida Ex Rel. C.A. Brown et al v. Robert T. Dewell, Judge (1938) __ Fla. __, 179 So. 695.

Here is Don's October 13, 1994 emergency motion with affidavit for 28 USC §§ 144, 455 relief from Judge Gibson:

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

File No. 1:90-CV-175

DONALD EDGAR JOHNSON,

RELATED: Mich. Supreme Ct.#97521
U.S. Supreme Ct. #94-146

Plaintiff,

Hon. Benjamin F. Gibson

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR, THE ESTATE OF CARL A. JOHNSON, SR., THE LAW FIRMS OF LANDMAN LATIMER CLINK & ROBB, CULVER LAGUE & McNALLY, O'TOOLE STEVENS JOHNSON KNOWLTON & ROLF, O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND, P.C., THE STATE OF MICHIGAN, And ROBERT J. DANHOF, Michigan Court Of Appeals Chief Judge, Jointly And Severally,

Defendants.

ORAL ARGUMENT REQUESTED

PLAINTIFF'S EMERGENCY MOTION FOR 28 USCS §§ 144,455(a) RELIEF FROM JUDGE GIBSON PLUS FRCVP 59(e),60(b)(5)(6) RELIEF FROM HIS 12/19/90-9/27/94 JUDGMENT AND ORDERS (INCLUDING 1/5/94 INJUNCTION); AND IN THE ALTERNATIVE, FOR CERTIFICATION OF DENIAL PLUS DISMISSAL OF CONSTITUTIONAL ISSUE FOR 28 USC § 1292(b) INTERLOCUTORY REVIEW.

NOW COMES DONALD EDGAR JOHNSON, plaintiff in pro per, who -- pursuant to W.D.Mich.L.R. 30 -- emergency moves for 28 USCS §§ 144,455(a) relief from

decisionmaker Judge Benjamin F. Gibson plus FRCVP 59(e),60(b)(5)(6) relief from his 12/19/90-9/27/94 judgment and orders (including 1/5/94 injunction); and in the alternative, for certification of denial plus dismissal of the constitutional issue for interlocutory review.

This document qualifies as a timely motion for this Court's reconsideration of its 9/27/94 Order **not requiring leave from a magistrate judge** that could delay proceedings by six months (as when plaintiff sought leave for Rule 59(e) relief from the 1/5/94 Order) because (a) it incorporates plaintiff's 9/26-9/29/94 motion & supplement for Rule 59(e) relief, and (b) this it is filed within "a reasonable time" (14 days from the 9/27/94 judgment) for FRCVP 60(b)(5)(6) emergency relief when no magistrate judge granted plaintiff's timely 9/26-9/29/94 emergency motion, brief, and supplement for leave from a magistrate judge to file plaintiff's timely emergency motion for FRCVP 59(e) relief within required 10 days of the 9/27/94-entered order.

WHEREFORE, plaintiff emergency moves for 28 USCS §§ 144,455(a) relief from decisionmaker Judge Gibson plus FRCVP 59(e),60(b)(5)(6) relief from his 12/19/90-9/27/94 judgment and orders (including 1/5/94 injunction); and in the alternative, for certification of denial plus dismissal of the constitutional issue for interlocutory review. * * *

A F F I D A V I T

State of Michigan)
) SS
County of Muskegon)

Donald Edgar Johnson, first duly sworn and deposed, says:

1. He is plaintiff herein this non-closed case.

2. This affidavit is made in good faith.

3. Judge Benjamin F. Gibson cut plaintiff off at the 12/5/90 dispositive hearing thereby preventing plaintiff from refering to his evidence filed long before that hearing and re-filed at the onset of that hearing.

4. A hearing before an unbiased and impartial decisionmaker is a basic requirement of due process.

5. The probability of actual bias

on the part of decisionmaker Judge Gibson is too high to be constitutionally tolerable.

6. No person, including persons within a class of resulted indigent pro se nonlawyer victims of fiduciaries' longtime Confidence Game-Abuse of Judicial Process conspiracies, shall be denied the equal protection of the laws.

7. Contrary to FRCVP 56, Judge Gibson 12/5-12/19/90 did not due process-equal protection adjudicate defendants' motion for res judicata summary disposition on plaintiffs' evidence.

8. Despite plaintiff's filing pertinent 1973-82 state trial evidence 1-judge reviewed then ordered removed in 1983, plus state judgments procured without due process, Judge Gibson joined state courts' 1974-89 denying plaintiff's due process-equal protection right of appellate review.

9. Contrary to federal doctrine of res judicata [Allen v McCurry (1980) 449 US 90,95, 66 LEd2d 308,313, 101 S Ct 411], Judge Gibson did not due process-equal protection 12/5-12/19/90 deny defendants' motion for res judicata

summary disposition.

10. Contrary to U.S. Const. Amend. 1, Judge Gibson did not due proecess-equal protection provide reasonable access for plaintiff's 3/10/92 emergency (undocketed) motion for FRCVP 60(b) relief supported by a copy of plaintiff-appellant's 725-pages Joint Appendix that was ignored by Court of Appeals for the Sixth Circuit No. 91-1160 thanks to defendants-appellees' masquerading as defendants-appellants with supplementary joint appendix duplicating their '12/5- 12/19/90 switched-for-plaintiff's' evidence in district court.

11. Contrary to Judge Gibson's 4/16-7/13/92 Orders rejecting plaintiff's emergency 3/10/92 motion and supplements for FRCVP 60(b) relief -- (and in agreement with Judge Gibson's 1/5/94-entered Order allowing further pleadings) -- no 12/18/90 "final" judgment has already been entered dismissing this action so that 'the case is not longer pending in this or any other federal court'.

12. Contrary to Judge Gibson's 4/16-7/13/92 Orders, Judgment in this action was not entered on December 18, 1990;

rather, it was entered on December 19, 1990.

13. **Nowhere** in the Judge Gibson 12/19/90-entered opinion and judgment is there dismissal of the action; rather, there is dismissal of just the original thru 4th amended complaints. See Opinion and Judgment (docket nos. 102,103).

14. Contrary to Judge Gibson's 4/16-7/13/92 Orders, no 12/18/90 final judgment dismissed this action; rather, a 12/19/90 non-final judgment dismissed plaintiff's original thru 4th amended complaints.

15. Judge Gibson 3/11/92-9/27/94 refused to grant FRCVP 60(b)(5)(6) relief that would have set aside or vacated his 12/19/90 thru 9/27/94 judgment and orders procured by extrinsic frauds upon the courts and/or without due process-equal protection.

16. Judge Gibson 1992-94 refused plaintiff FRCVP 60(b)(6) relief plus FRCVP 15(a) leave to file an amended complaint comporting with his preponderance of evidence when justice so required.

17. Contrary to U.S. Const. Amends. 5 and 14 due process-equal protection clauses, Judge Gibson -- without providing due process-equal protection to plaintiff -- entered 1990-94 judgments and orders that are consistently blatantly partial to defendants.

18. Plaintiff complained to the U.S. Supreme Nos. 93-551 + 94-146 of Judge Gibson's 1990-94 judicial misconduct and urged his disqualification since 10/1/93 on heels of a fruitless interlocutory appeals to the U.S. Court of Appeals for the Sixth Circuit Nos. 91-1160 + 92-1829 that would have remedied the misconduct without disqualification.

19. Plaintiff mailed copies of his 10/1/93 and '7/22/94-pending' two U.S. Supreme Court Petitions for Extraordinary Writ to Judge Gibson in care of the Clerk of this Court. See 10/1/93 Petition, pp 38,49; 7/22/94 Petition, pp 8-10, herein the record of this case.

20. Despite plaintiff's urging, the U.S. Supreme Court declined to review this matter on the merits; i.e. on the record.

21. Relief from Judge Gibson's 12/18/90-filed thru 9/23/94-filed judgments pursuant to Rule 60(b)(6) should have been 3/11/92-9/27/94 granted in this case arising over dispute between litigants where Judge Gibson had violated 28 USCS § 455(a), which concerns disqualification of federal judges and Judge Gibson should have known of circumstances which disqualified him, for lack of impartiality, from 12/5/90-9/27/94 hearing this dispute.

And this case's 3/11/92-9/27/94 $2\frac{1}{2}$-years delay was attributable to Judge Gibson's inexcusable failure to disqualify himself.

Plaintiff believes that he is filing this affidavit at least ten (10) days prior to any district court judge's yet-unannounced hearing of plaintiff's appeal for FRCVP 59(e) relief from Judge Gibson's 9/27/94 Order affirming Magistrate Judge Hugh W. Brenneman, Jr.'s post-1/5/94 pertinent decisions favorable to defendants on ground of Judge Gibson's 3/11-7/13/92 erroneously denying access to plaintiff's 3/10/92 motion for FRCVP 60(b) relief from the 12/19/90 judgment, then repeatedly erroneously ruling that

his 12/19/94 judgment dismissed the entire case rather than the complaints.

23. Plaintiff's actions:

#1: 4/73-11/89 (contract-motion for relief)

#2: 2/86-11/89 (independent for relief)

#3: 5/86-TO DATE (estate claim)

#4: 2/90-TO DATE (civil rights, copyright etc)

24. Justice requires that Judge Gibson disqualify himself, a different judge provide FRCVP 59(e) relief altering or amending Judge Gibson's 9/27/94 Memorandum Opinion & Order, and a FRCVP 60(b)(5)(6) evidentiary hearing be provided for resolving the following issues forthwith:

A. WHETHER PERTINENT 1974-TO-DATE STATE AND FEDERAL COURT JUDGMENTS OF PLAINTIFF'S ACTIONS #1 THRU #4 SHALL BE SET ASIDE OR VACATED BECAUSE THEY WERE PROCURED BY FRAUDS UPON THE COURTS AND/OR WITHOUT DUE PROCESS-EQUAL PROTECTION? FRCVP 60(b)(5)(6); U.S. CONST. AMENDS. 1,5,14.

B. WHETHER THE DEFENDANT ESTATE'S ATTORNEY THOMAS J. O'TOOLE -- (NOT THEN-ATTORNEY ALBERT J. ENGEL) -- DRAFTED THE ALLEGED UNLAWFUL 1/6/65 APPENDIX TO 12/22/64 NIGHTCLUB SALES AGREEMENT AT THE HEART OF THIS 1964-94 DISPUTE?

C. WHETHER DEFENDANT LAW FIRMS ARE UNQUALIFIED TO REPRESENT ANY OF THE JOINT AND SEVERAL DEFENDANT THREE JOHNSONS?

D. WHETHER PLAINTIFF SHALL PROCEED ON HIS CAPTION-SUPPLEMENTED (TO EXCLUDE JUDGE ALBERT J. ENGEL) 1/24/94 CLASS ACTION 5TH AMENDED COMPLAINT SUPPORTED BY HIS 725 PAGES JOINT APPENDIX?

25. Plaintiff has yet to receive any compensation from defendants' severe continuing wrongdoing since 1964.

Further, affiant sayeth not." Don's 10/11/94 Affidavit In Support Of Motion For § 144 Relief.

"Pro se complaints are held to less stringent standards than formal pleadings drafted by lawyers, and allegations in pro se complaints must be taken as true and construed in favor of plaintiff." Malone v Colyer (1983 CA6 Tenn) 710 F2d 258.

2. Don Provided Facts That A Reasonable Person With Knowledge Of All The Facts Would Conclude That The Judge's Impartiality Might Reasonably Be Questioned.

"§ 455. **Disqualification of justice, judge, or magistrate** (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned * * * (b) He shall also disqualify himself in the following circumstances: * * * (4) He knows that he * * * has financial interest in the subject matter in controversy or in a party to the

proceedings, or any other interest that could be substantially affected by the outcome of the proceeding." 28 USC § 455(a)(b)(4).

"The difference between sections 144 and 455 is that section 455 is self-executing, requiring the judge to disqualify himself for personal bias even in the absence of a party complaint. 'Recusal is mandated . . . only if a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned.'" Trotter v. Intern. Longshoremen's & Warehousemen's Union, 704 F2d 1141, 1144 (9th Cir. 1983). Accord United States v. Cowden, 545 F2d 257 (1st Cir.1976), cert. denied, 430 U.S. 909, 97 S.Ct. 1181, 51 LEd2d 585 (1977).

"28 USCS §§ 144,455 give life to due process requirement of fair trial before fair tribunal, and claim of bias and prejudice that survives rigid scrutiny under §§ 144,455 will necessarily pass constitutional muster." United States v International Business Machines Corp. (1979 SD NY) 475 F Supp 1372, 19792 CCH Trade Cases ¶ 62920, affd (CA2) 618 F2d 923, 1980-1 CCH Trade Cases ¶ 63202.

"A fair trial in a fair tribunal is a basic requirement of due process." Re Murchison (1954) 349 US 133, 99 LEd 942, 75 S Ct 623.

"Every procedure which would offer a possible temptation to the average man as a judge not to hold the balance nice, clear, and true between the state and accused denies the latter due process of law." Id.

"A fair trial, as required by due process, requires not only an absence of actual bias on the part of the judge, but also that no man be a judge in his own case or

try cases where he has an interest in the outcome." Id.

3. The Present District Judge Should Have Known Of Circumstances Which Disqualified Him From Hearing This Dispute For Lack Of Impartiality.

Between 1990 and 1995, Don has been the victim of of all 9 defendants' abuse of the judicial process continuing ongoing conspiracy where a judge may have been "bought" with a political action committee funded, in part, by a 1965-fabricated Kandy Tapes And Records Corp.

a. His Conduct Suggests That He May Be Beholden To Conspirators Who Stole Don's Ownership Of Kandy Tapes & Records Corp. Plus Kandy Music Publishers.

The 1990-94 district judge's conduct suggests collusion between himself and the defendants to coverup the corruption -- resulting in an erroneous pre-discoveries pretrial res judiocata summary disposition of Don's 4th amended complaint

and orders which should be set aside for having been procured by fraud/undue influence and without due process, etc.

> "Relief from judgment pursuant to Rule 60(b)(6) should have been granted in case arising over dispute between litigants * * * where * * * Court judge had violated 28 USCS § 455(a), which concerns disqualification of federal judges * * * and judge should have known of circumstances which disqualified him, for lack of impartiality, from hearing dispute." Liljeberg v Health Servicers Acquisition Corp. (1988, US) 100 LEd2d 855, 108 S Ct 2194.

4. The 3/11/92-9/27/94 2½ Years Delay In Granting Deserved Relief Was Entirely Attributable To The Judge's Inexcusable Failure To Disqualify Himself.

This was the period between Don's delivering his first post-appeals motion for an FRCVP 9(b),60(b)(5)(6) evidentiary hearing and Judge Gibson's 9/27/94 order threatening contempt proceedings if more of such pleadings were filed while affirming "his" magistrate judge's rejecting Don's pleadings as frivolous.

From his reading Don's pre-judgment, post-judgment, and post-appeals pleadings,

Judge Gibson had to have become aware of his own grave abuses of discretion while failing his oath to uphold the federal laws and constitution against corruption, ect.

Judge Gibson is black. Birds of a feather associate together. He knew who his mentors were.

His conduct herein suggests that he might be beholden to blacks who for years were secretly profiting from Don's phono records/music hard work and sacrifice.

The president of the American Federation of Musicians' representative who 1974 denied a duplicate or contents copy of Don's rightful ownership of Kandy Tapes & Records Corp. (Ind-AFM) assets was black.

> "Delay was entirely attributable to judge's inexcusable failure to disqualify himself." Liljeberg, supra.

5. A New District Judge Can Change The 1991-95 Court Of Appeals Fraud Upon The Courts Judgments Procured Without Due Process.

"District court has power to change judgment of appellate court where it is no longer equitable that judgment have prospective application." Bailey v Ryan Stevedoring Co. (1978, MD La) 443 F supp 899, 16 BNA FEP Cas 709, 16 CCH EPDS ¶ 8223, 25 FR Serv 2d 512, revd on other grounds (CA 5 La) 613 F2d 588, 22 BNA FEP Cas 445h 881, 24 CCH EPD ¶ 31211 abd cert deb 450 US 964, 67 LEd2d 613, 101 S Ct 1479, 25 BNA FEP Cas 112, 25 CCH EPD ¶ 31589.

B. A FIRST-EVER APPELLATE REVIEW OF THE COUNTY'S 1974 "NO CAUSE OF ACTION" DISMISSAL SHALL BE EXPEDITIOUSLY PROVIDED

The 12/9/74 "bought" judge Piercey's granting unqualified defendant Landman law firm's motion for dismissal without waiver or suspension of cost of $5,000 transcript was never 1974-89 provided an appeal of right despite Don's nonstop pleadins shown in his 725 (now-1101) -pages appendices herein.

Don has repeatedly alleged that this and subsequent state courts judgments without due process-equal protection

were procured and prolonged by defendants' 1973-to-date continuing chain of extrinsic frauds and undue influence upon the courts.

> A Federal court "may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake." In Re Sun Valley Food Co. (1986 CA6 Mich) 801 F2d 186.
>
> "Federal district courts have **appellate jurisdiction over state courts decisions** which can be collaterally attacked for extrinsic fraud." Moffett v Robbins (1935 DC Kan) 14 F Supp 602, affd (CA10 Kan) 82 F2d 431, cert den 298 US LK675, 80 LEd 1397, 56 S Ct 940. (Emphasis added).

C. JUDGE GIBSON IS TOO PREJUDICIAL TO PRESIDE OVER A FORTHCOMING TRIAL.

> "The test of the sufficiency of an affidavit disqualifying a judge is whether or not its content shows that the party making it has a well-grounded fear that he will not receive a fair trial at the hands of the judge." State of Florida Ex Rel. C.A. Brown et al v. Robert T. Dewell, Judge, supra.
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> "Allegations of fact in an affidavit of prejudice on the part of a judge are, unless frivolous and fanciful, sufficient to support a motion to disqualify on the ground of prejudice." Id.

VI. THE PRO SE NONLAWYER PUBLIC PHONO RECORDS-MUSIC PUBLISHING-NIGHTCLUB FAMILY JOINT VENTURER -- WHO WAS PROVIDED NO COMPENSATION FOR HIS $300,000 - $1,000,000 1964-73 INVESTED PRIVATE PROPERTIES OR APPELLATE REVIEW-WITH EVIDENCE OF HIS 1973-94 STATE CONTRACT ETC. ACTIONS -- SHALL BE PROVIDED WITH DEFENDANT STATE AND ITS AGENTS' PROMPT ACCOUNTING OF HIS PROPERTIES TAKEN (A) FOR PUBLIC USE, (B) FOR POLITICAL USE/BUYING JUDGES, AND (C) FOR NONPUBLIC USE.

The state courts 1970-94 judgments were procured and prolonged as a result of defendants' calculated and premeditated conspiracy to defraud the investor and equitable relief must be afforded. Const. Amends. 5,14.

> "Equitable relief will be afforded where the judgment has been procured as result of calculated and premeditated conspiracy to defraud." Jungersen v Axel Bros., Inc. (1954 DC NY) 121 F Supp 712, afmd 217 F2d 646, cert den 75 S Ct 784, 349 US 940, 99 LEd 1267, reh den 76 S Ct 99, 350 US 868, 100 LEd 769.

The State's county's citizens -- politicians included -- used the joint venturer-Don's public properties and benefited by them. Politicians used some of them for collateral for financing

a committee's financing attorneys to become judges. Citizens used Don's private properties for entertainment from his live and recorded performances, for real estate improvements to an eyesore on a main road, and for taxes collected.

The state courts were unable or unwilling to provide the conned and wiped out investor with a fair trial, waiver or suspension of transcript fee, or an appeal of right resulting in substantial private properties taken for public use for "free" in violation of the Constitution.

> "A prior state court judgment would not preclude the federal courts from acting where the state courts were unable or unwilling to protect federal rights." Fellowship of Christ Church v Thorburn (1985 CA6 Mich) 758 F2d 1140,1144.

> When state officers in exercise or attempted exercise of their official authority, deny to any citizen equal protection of laws or deprive him of his property without due process of law, state itself does so and such official action comes within constitutional prohibitions. Douglas Park Jockey Club v Grainger (1906 CC Ky) 146 F 414, rev on other grounds (CA6 Ky) 148

F 513.

There has been a severe breach of fiduciary duty. The investor Don was never compensated for his earned equity in the promised fair incorportation of the public nightclub venture.

Federal courts can mandate a stockholder's derivative action.

> "The stockholder's derivative action is an invention of equity to supply the want of an adequate remedy at law to redress breaches of fiduciary duty by corporate managers, who usually also possess the control which enables them to suppress any effort by the corporate entity to remedy such wrongs." Koster v Lumbermens Mutual Cas. Co. (1946 US) 91 LEd 1067,1068.

IX. THE DEFENDANT STATE AND ITS LAWYER AGENTS WITH UNDUE INFLUENCE PROCEEDED IN BAD FAITH AND THE PRO SE NONLAWYER-FOR-22-YEARS IS ENTITLED TO COST OF HIS 4-YEARS FEDERAL APPEALS INCLUDING A REASONABLE ATTORNEY FEE.

A. PRO SE NONLAWYER'S CIVIL RIGHTS WERE INTERFERED WITH IN STATE COURTS FOR 16 YEARS AND FOR 4 YEARS MORE IN FEDERAL COURTS.

1. His 1974 Trial Evidence 16 Years Withheld From Appellate Review In State Courts Was Further Withheld Since The Onset Of His 1990 Federal Question -Interfering

with Civil Rights - Copyright Federal Action.

Pro se nonlawyer seeking just compensation plus damages for his substantial private properties taken for public use/buying judges etc. should be awarded cost of his 4 years of federal appeals including a reasonable attorney's fee where a state and its influential lawyer agents attempted to further exhaust him by further continuing their 16 years' withholding of his evidence from appellate review, filing prediscoveries false and frivolous pleadings, delaying, oppressing, harassing, and causing massive expense.

Don's original 1974 trial exhibits were ignored by state appellate courts for 16 years. Then they were brought to the U.S. district judge who ignored them in 1990. Then they were brought to the 1991, 1992, and 1995 court of appeals where they were still ignored. And only the "bought" 1974 county trial

judge has ever reviewed the victim's evidence proving his 1973-89 case against his 3 family members while implicating the state and its agents herein.

2. Don Had To Litigate Against Another "Bought" Judge For 4 Years.

Don 1973-89 litigated against state judges "bought" in part with Don's private properties taken for public use by defendants. Then in district court appeared another judge apparently "bought" in part with Don's properties. And Don had to litigate against his abuse of discretions, frauds upon the courts, and denials of due process-equal protection for 4 years.

3. Don Had To Answer False And Frivolous Pleadings In Appellate Courts.

In the 1991 court of appeals, Don had to file lengthy pleadings answering the defendants' **false pleadings**: (a) that defendants' evidence was

plaintiffs';[207] (b) that plaintiff's federal question-civil rights-copyright issues against the 9 defendants had already been litigated in state courts so that res judicata barred Don's 4th amended complaint; (c) that district court did not have appellate jurisdiction of the state court 1974 dismissal for "no cause of action"; and (d) that appellees' joint appendix was appellants'.[855]

In the 1992 court of appeals, Don had to file lengthy pleadings answering defendants' falsely-captioned false pleadings (a) that the court of appeals did not have subject matter jurisdiction; (b) that the matter was barred under the doctrine of res judicata; (c) that the matter was not otherwise subject to appeal; (d) that there was no genuine issue as to any material fact; (e) that the matter was no longer pending in any

federal court; (f) that Don's appeal was frivolous; and (g) that Don's pleadings were continuing harassments.

See Culver firm's 7/16/92 motion to dismiss and Don's 7/17-7/22/92 responses.

In the 1995 court of appeals, Don had to litigate where an unqualified U.S. court of appeals "bought" judge had intervened and court of appeals frauds covered up the unqualified district judge's frauds.

4. Don Had To Continue Litigating In Pro Per Where Necessarily Competent Lawyers Were Unavailable.

The state's lawyers were and are controlled by defendant state and its judicial branch agents.

Don hired and fired enough attorneys to learn that rather than uphold the federal laws and constitution, those lawyers would pretend to provide competent services so as not to jeopardize

their careers where the state and its agents were avoiding just compensation to the victim of the their confidence game-abuse of the judicial process conspiracies.

5. There Was Massive Expense.

For 4 years, Don had to expend so much time and money for keeping this action alive and well that he had to forego gainful employment that could have brought substantial pay -- in addition to routine costs of three 1991-95 federal appeals to court of appeals and U.S. Supreme Court plus one 1994 state appeal to U.S. Supreme Court re defendant estate claim. Merek v Chesny.

> **"Proceedings in vindication of civil rights; attorney's fees** The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they

are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State where the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of section 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 USCS §§ 1981-1983, 1985,1986], * * * the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." 42 USCS § 1988. (Emphasis added).

6. A Defendant Attorney Signed HIs Name To A Pleading In Violation Of The Rule.

Defendant Attorney Kevin B. Even, in the 1991 Court of Appeals, signed a pleading that he was a defendant appellant in violation of the Rule.

"...[A] person who signs a pleadings, motion, or other paper in violation of the rule may be ordered to pay a reasonable at torney's fee -- imposes an objective standard of reasonable inquiry which does not mandate a finding of bad faith; thus, a federal court may properly impose attorneys' fees as a sanction under Rule 11 for conduct that merely fails to meet

a reasonableness standard." Chambers v NASCO, Inc., supra.

7. Plaintiff's Litigation Efforts Directly Benefits Others.

Corruption in state and federal courts has been exposed by plaintiff's litigation.

"[A] court's power to control litigants * * * from its historic equity jurisdiction -- allows a federal court to award attorneys' fees to a party whose litigation efforts directly benefit others." Id.

"A plaintiff must be a 'prevailing party' to recover attorneys' fees under Civil Rights Attorney's Fees Award Act of 1976 (42 USCS § 1988); plaintiffs may be considered 'prevailing parties' for attorneys' fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit." Hensley v Eckerhard (1983 US) 461 US 424, 76 LEd2d 40,43, 103 S Ct 1933. (Emphasis added).